

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

JANUARY TERM, 1911.

No. 2253.

800

JOHN H. ADRIAANS, APPELLANT,

vs.

WILLIAM P. DILL, MARIAN A. DILL, JOHN H. DILL,
ET AL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED DECEMBER 1, 1910.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

JANUARY TERM, 1911.

No. 2253.

JOHN H. ADRIAANS, APPELLANT,

vs.

WILLIAM P. DILL, MARIAN A. DILL, JOHN H. DILL, J. EDWARD DILL, LEO A. J. DILL, A MINOR, BY HIS GUARDIAN AND NEXT FRIEND, ANNIE L. DILL; MAURICE E. DILL, A MINOR, BY HIS GUARDIAN AND NEXT FRIEND, ANNIE L. DILL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

No. 2253.

JOHN H. ADRIAANS, Appellant,
vs.
WILLIAM P. DILL et al.

a Supreme Court of the District of Columbia.

Equity. No. 28183.

WILLIAM P. DILL, MARIAN A. DILL, JOHN H. DILL, J. EDWARD Dill, Leo A. J. Dill, a Minor, by his Guardian and Next Friend, Annie L. Dill; Maurice E. Dill, a Minor, by his Guardian and Next Friend, Annie L. Dill, Complainants,

vs.

JOHN H. ADRIAANS, SAMUEL H. LEWIS, and CLARENCE F. NORMENT,
Surviving Trustee, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed, and proceedings had, in the above-entitled cause, to wit:

1 *Bill.*

Filed November 27, 1908.

In the Supreme Court of the District of Columbia, Holding an
Equity Term.

Equity. No. 28183.

WILLIAM P. DILL, MARIAN A. DILL, JOHN H. DILL, J. EDWARD Dill, Leo A. J. Dill, a Minor, by his Guardian and Next Friend, Annie L. Dill; Maurice E. Dill, a Minor, by his Guardian and Next Friend, Annie L. Dill, Complainants,

vs.

JOHN H. ADRIAANS, SAMUEL H. LEWIS, and CLARENCE F. NORMENT.
Surviving Trustee, Defendants.

The original Bill of Complaint of Complainants respectfully represents to the Court as follows:

1st. That all of Complainants are citizens of the United States; that the Complainant William P. Dill is a resident of the City of New York in the State of New York, is of full age, and brings this suit in his own right as hereinafter set forth; that the complainants Marian A. Dill, John H. Dill, J. Edward Dill, Leo A. J. Dill, and Maurice E. Dill, are all residents of the City of Baltimore in the State of Maryland, and bring this suit in their own right as hereinafter set forth. That the Complainants, Leo A. J. Dill, being a minor of nineteen years of age, and Maurice E. Dill, being a minor of seventeen years of age, bring this suit through their Guardian and next friend, Annie L. Dill, who is their mother.

2nd. That the Defendant John H. Adriaans is a citizen of the United States and a resident of the District of Columbia, and is sued in his own right as hereinafter set forth. That the Defendant Samuel H. Lewis, is a citizen of the United States and a resident of Glendale, in the State of Maryland, and is sued in his own right as hereinafter set forth. That the Defendant Clarence F. Norment is a citizen of the United States and a resident of the District of Columbia, and is sued as the surviving trustee under a deed of trust as hereinafter set forth.

3rd. That on, to-wit, the 18th day of December, 1897, Peter Dill, a citizen of the United States and a resident of the District of Columbia, departed this life seized and possessed of certain land and premises situated in Charles County in the State of Maryland, and also of certain land and premises situated in the District of Columbia, including the following land and premises, to-wit: Parts of lots numbered Two Hundred and Fifty-one, (251), and Two Hundred and Fifty-two, (252), in Beatty and Hawkins' addition to Georgetown, in the District of Columbia, now known as parts of lots Two Hundred and Fifty-one, (251), and Two Hundred and Fifty-two, (252), in Square numbered Twelve Hundred and Ninety-nine, (1299), in the City of Washington in the District of Columbia, being the same parts of said lots which were conveyed to said Peter Dill by two deeds, one from Thomas Weaver, dated August 26th, 1858, and recorded January 17th, 1859, in Liber J. A. S. No. One Hundred and Sixty-eight, (168), Folio Twenty-five, (25), of the Land Records of the District of Columbia, and the other from Elias A. Eliason, dated September 9th, 1861, and recorded December 11th, 1861, in Liber J. A. S. No. Two Hundred and Fifteen, (215), Folio Ninety-eight, (98), of the Land Records of the District of Columbia. A more particular and detailed description of said parts of said lots being found in the aforesaid two deeds hereby referred to and prayed to be read and taken as a part hereof.

4th. That the said Peter Dill left a last will and testament dated the 13th of February, 1896, executed in manner and form sufficient to pass both real and personal property, which was finally admitted to probate and record by the Supreme Court of the District of Columbia, Holding a Probate Court, on the 28th day of September, 1900, and on the 5th day of February, 1902, whereby he devised all of the

aforesaid real estate to his wife, Ann Dill, for life, and after her death to the grandchildren of his said wife, being the children of the only stepson of deceased as were then living, or to the child or children of any deceased grandchild, in fee simple. That a certified copy of the said will of said Peter Dill, Deceased, is hereto annexed, marked Exhibit "A," and prayed to be read and taken as a part hereof. That the said Ann Dill, wife of said Peter Dill, had been previously married, and had two sons as a result of said marriage,

4 to-wit, William H. McDonald and James McDonald; that James McDonald left home many years prior to the death of Peter Dill, and was never heard from or his whereabouts known; that William H. McDonald, the remaining son of said Ann Dill by previous marriage, was adopted by said Peter Dill, (the said Peter Dill and Ann Dill having had no children as the result of their marriage), and is the stepson referred to in the will of said Peter Dill; that the said William H. (McDonald) Dill the stepson of said Peter Dill, intermarried with one Annie Dumler, and that there resulted from said marriage nine children, two of whom Harry Dill and Nellie Dill died before said Peter Dill, both unmarried and intestate; that the seven remaining children as the result of said marriage are William P. Dill, one of the Complainants to this suit, and one of the devisees of the remainder in fee under the will of said Peter Dill, Marian A. Dill, one of the Complainants to this suit, and one of the devisees of the remainder in fee under the will of said Peter Dill, John H. Dill, one of the Complainants to this suit, and one of the devisees of the remainder in fee under the will of said Peter Dill, J. Edward Dill, one of the Complainants to this suit, and one of the devisees of the remainder in fee under the will of said Peter Dill, Leo A. J. Dill, a minor, one of the Complainants to this suit, and one of the devisees of the remainder in fee under the will of said Peter Dill, Maurice E. Dill, a minor, one of the Complainants to this suit, and one of the devisees of the remainder in fee under the will of said Peter Dill, and Bertha Dill (Kearney) who is expressly excepted and excluded from any and all share in the estate of said Peter Dill under said will. That said Leo A. J. Dill and Maurice E. Dill, being minors, bring this suit by Annie L. Dill, their mother who is their next friend and also Guardian of their property under decree of the Supreme Court of the District of Columbia, holding a Probate Term.

5th. That there was a caveat filed and contest had in reference to the probate of said will, and the Executors therein named, Joseph J. Waters and Oliver P. Johnson, both of whom were lawyers and Members of the Bar of the District of Columbia, undertook to defend and sustain said will as they were by law and duty, and by the acceptance of said executorship bound to do; that thereupon one John H. Adriaans, and one Samuel H. Lewis, Defendants to this suit, as attorneys-at-law and members of the Bar of this Honorable Court appeared in said probate case, involving the contest of the will of said Peter Dill, Deceased, and claimed to represent as attorneys-at-law, Ann Dill, the widow of said Peter Dill, and all of your Complainants; that your Complainants do not know whether their grand-

mother, the said Ann Dill, ever employed said John H. Adriaans and Samuel H. Lewis, or either of them, to represent her as attorneys in the matter of the estate of said Peter Dill, or in the matter of the probate of his last will and testament, nor have your Complainants any knowledge of any agreement between said Ann Dill and said John H. Adriaans and Samuel H. Lewis, in reference to legal services rendered or to be rendered by said John H. Adriaans and Samuel H. Lewis in said probate case, or in said contest of said

will for said Ann Dill, but your Complainants are informed
6 and believe that said Samuel H. Lewis and said John H.

Adriaans, deceived and defrauded said Ann Dill, widow, as to her rights and duties in regard to the probate of the will of said Peter Dill, Deceased, and deceived and defrauded the said Ann Dill into executing a contract in reference to compensating said John H. Adriaans and Samuel H. Lewis for alleged professional services rendered, and deceived and defrauded said Ann Dill, widow, into executing a deed of trust hereinafter referred to, to secure the payment of the fees of said John H. Adriaans and Samuel H. Lewis for said alleged professional services.

6th. That your Complainants were all made parties to aforesaid alleged contract, providing for compensation for professional services to said John H. Adriaans and Samuel H. Lewis, and they were likewise made parties to the said deed of trust to secure the performance of said contract for the payment of fees to said John H. Adriaans and Samuel H. Lewis; that at the time of the execution of said contract and said deed of trust, your Complainants were of the following age: William P. Dill, twenty-one years of age, Marian A. Dill, eighteen years of age, John H. Dill, fifteen years of age, J. Edward Dill, thirteen years of age, Leo A. J. Dill, nine years of age, and Maurice E. Dill, seven years of age. That your Complainants did not read said contract providing for the payment of fees for professional services to John H. Adriaans and Samuel H. Lewis, nor did they have the same read to them, nor were the contents thereof made known to them, and that to the present day they have no further knowledge or information in reference to said contract, ex-

cept the recitals in said deed of trust referring to said contract
7 That the Complainants did not read, nor did they have read to them, the said deed of trust at the time of the execution thereof, nor were the contents of said deed of trust or its effect, known to your Complainants until recently, to-wit, during the past year, and thereupon they immediately employed counsel to take the proper steps to protect and restore to them their rights in the premises; that a certified copy of said deed of trust from Ann Dill and Complainants to Clarence F. Normont and Charles C. Cole, Trustees, dated August 30th, 1898, and duly recorded in Liber 2512, Folio 429, on the 28th of September, 1900, is hereto annexed, marked Exhibit "B" and prayed to be read and taken as a part hereof. That at the time of the signing and execution of said contract and said deed of trust, the said John H. Adriaans and Samuel H. Lewis claimed to represent as attorneys your Complainants in the matter of the estate of said Peter Dill, Deceased; that your Complainants,

however, never employed, either directly or indirectly said John H. Adriaans and said Samuel H. Lewis, or either of them, to represent them, or any of them, in said proceedings. That the said John H. Adriaans and said Samuel H. Lewis, with intention to deceive and defraud your complainants knowingly and wilfully induced your Complainants, and each of them, to sign said contract and said deed of trust by representing to your Complainants, and each of them, that the said papers being signed, to-wit, the contract and deed of trust, were for the purpose of obtaining an allowance for their grandmother, Ann Dill, the widow of said Peter Dill, Deceased.

8 That your Complainants and each of them as far as they were able to comprehend what they were doing, owing to the tender years of several of your Complainants, signed said contract and said deed of trust under the misrepresentation aforesaid, to-wit, that the object of the same was to obtain an allowance for the grandmother of Complainants, Ann Dill, the widow of Peter Dill, Deceased. That your Complainants, and each of them, learned for the first time of the misrepresentation and fraud that had been practiced upon them by the said John H. Adriaans and Samuel H. Lewis, during the past year, and employed counsel as aforesaid.

7th. That the said John H. Adriaans and Samuel H. Lewis, as a matter of fact, never rendered any legal services that were necessary to protect the interest of Complainants or that were beneficial to, or aided the interest or rights of Complainants; that on the contrary, the said John H. Adriaans and Samuel H. Lewis, instigated and continued much needless litigation in reference to the probate of the will of said Peter Dill, Deceased, and in the settlement of his estate, thereby incurring great expense to said estate; and, furthermore, the said John H. Adriaans and Samuel H. Lewis entered into a fight and wrangle with the Executors of said Peter Dill in reference to the probate of the will of said Peter Dill and in the settlement of his estate, altogether unfounded and all to no purpose, conducting the same in an unprofessional and incapable manner, thereby causing much loss and expense to the rights, interest and estate of your Complainants; that in support hereof your Complainants refer to the record and proceedings had in the probate of the will of said Peter Dill, Deceased, and in the settlement of his estate,
9 being Administration Cause No. 8225, in the Supreme Court of the District of Columbia, holding a Probate Term.

8th. That the Trustees named in said deed of trust to-wit, Charles C. Cole and Clarence F. Norment, never accepted or consented to the trust in them reposed under said deed of trust, but on the contrary, the said Charles C. Cole on, to-wit, the 4th day of October, 1900, executed a renunciation of said deed of trust and duly recorded the same on the 4th of October 1900, in Liber 2530, Folio 17, in the Recorder of Deeds' Office of the District of Columbia, a true copy of which is hereto annexed, marked Exhibit "C" and prayed to be read and taken as a part hereof, and thereafter, the said Clarence F. Norment executed a renunciation of said trust under said deed of trust on the 31st day of October, 1900, and duly recorded the same on the 31st of October, 1900, in Liber 2537, at Folio 86, of the

land records of the District of Columbia, a true copy of which is hereto annexed, marked Exhibit "D" and prayed to be read and taken as a part hereof. That on the 17th day of March in the year of 1905, the said Charles C. Cole departed this life in the District of Columbia leaving the said Clarence F. Norment the surviving trustee under said deed of trust, vested with such title as said Cole and Norment may have had as such Trustees under said Deed of Trust owing to the fact that said tenure of said Trustees was that of joint tenancy.

9th. That Ann Dill, the Widow of said Peter Dill, died, to-wit, May 3rd, in the year 1906, intestate, being a resident of the District of Columbia and being about eighty-six years of age at the time of her death; that during the last ten or twelve years of her life she was not of strong mind and was easily influenced or swayed by others to consent to and do things which her judgment and will, if uninfluenced, would not have consented to or acted upon. That your Complainants are advised and believe, and therefore aver, that said deed of trust and said contract secured thereby are null and void and of no effect, as a matter of fact, but that the same does not appear of record, and they are further advised and believe, and therefore aver, that said deed of trust constitutes a cloud upon the title of the aforesaid real estate devised to and still owned and held in possession by them, and that they are accordingly entitled to have said cloud removed from their said real estate and have said deed of trust released of record and declared null and void and of no effect. And further, to have said contract secured by said deed of trust surrendered by said John H. Adriaans and Samuel H. Lewis, or either of them, and canceled and declared null and void and of no effect.

10th. That your Complainants have not, nor has anyone of them on becoming of age, ratified, sanctioned and consented to said contract or said deed of trust, but on the contrary, as set forth above, they have no knowledge of the contents of said deed of trust or said contract, or the effect thereof, until recently, to-wit, during the past year, and they hereby expressly repudiate and disclaim said contract and said deed of trust, or either of them, to be their act or deed, and refuse to be bound by said contract or said deed of trust.

11th. That your Complainants being without a plain, adequate and complete remedy at law, are advised that they are entitled to and do hereby seek the aid of this Honorable Court holding an Equity Term, to grant them the proper relief to which they are justly entitled.

Wherefore, the premises considered, your Complainants pray:

1st. That the defendants, and each of them, John H. Adriaans, Samuel H. Lewis and Clarence F. Norment, surviving trustee, be made parties defendant to this suit, and that a writ of subpoena may issue against each of them commanding them to appear and true answer make to the exigencies of this Bill.

2nd. That the alleged contract between Ann Dill and Complain-

ants on the one part, and John H. Adriaans and Samuel H. Lewis Defendants, on the other part in reference to compensation for professional services may be declared null and void and of no effect, and may be ordered surrendered to your Complainants to be canceled by them.

3rd. That said deed of trust referred to in the Bill may be declared null and void and of no effect, and that said Clarence F. Norment, or a trustee to be appointed herein, may be authorized and ordered to execute and deliver a proper and valid deed of release of said deed of trust to your Complainants for the purpose of recording the same in the Recorder of Deeds' Office of the District of Columbia.

12 4th. That the real estate, land and premises, referred to in the foregoing Bill and embraced in said deed of trust, may be decreed to be released and freed and fully discharged from the effect and control of said deed of trust, as though said deed of trust or the contract thereby secured, had not been made or executed.

5th. That such orders for publication and other purposes may be had herein as may be necessary and proper.

6th. That such other and further relief may be granted as to the Court may seem fit and proper and as the necessity of the case may require.

WILLIAM P. DILL,
 MARIAN A. DILL,
 JOHN H. DILL,
 J. EDWARD DILL,
 LEO A. J. DILL,
 By ANNIE L. DILL,
Guardian and Next Friend.
 MAURICE E. DILL.
 By ANNIE L. DILL,
Guardian and Next Friend.

DANIEL W. O'DONOGHUE,
Solicitor for Complainants.

CITY OF NEW YORK,
State of New York, ss:

I, William P. Dill, being on oath duly sworn, doth depose and say: That I have read the foregoing Bill by me subscribed and know the contents thereof; that the facts therein stated of my own knowledge are true, and those stated upon information and belief I believe to be true.

WILLIAM P. DILL.

Subscribed and sworn to before me this 31st day of October, 1908.

[SEAL.]

STEPHEN McCORMICK,
Notary Public, New York County.

13 CITY OF BALTIMORE,
 State of Maryland, To-wit:

We, Marian A. Dill, John H. Dill, J. Edward Dill, and Annie L. Dill, Guardian and next friend of Leo A. J. Dill and Maurice E. Dill, minors, do solemnly swear that we have read the foregoing Bill by us subscribed and know the contents thereof; that the facts therein stated of our knowledge are true, and those stated upon information and belief we believe to be true.

MARIAN A. DILL.
 JOHN H. DILL.
 J. EDWARD DILL.
 ANNIE L. DILL, *Guardian.*

Subscribed and sworn to before me this 24th day of October, 1908.

[SEAL.]

J. CALVIN MORGAN,
Notary Public, Baltimore City, Md.

14

“EXHIBIT A.”

I, Peter Dill, of Georgetown, as formerly called, in the District of Columbia, being in good health and of sound and disposing mind and memory, and feeling disposed to settle my worldly affairs before it shall please God to call me hence, Do therefore make this as my last Will and testament, in manner and form following—

First. I, request my Executors, hereinafter named, to pay all my just debts, funeral expenses and expenses of my estate in a lawful time after my decease.

Second. I give and devise and bequeath unto my dear wife, Ann Dill, during the term of her natural life, all of my Real and personal estate whatsoever, and whithersoever situated, but subject to the payments above required, and to the provisions about sale and re-investment hereinafter made.

Third. Upon the death of my said Wife, I give, devise and bequeath what then remains of such Real and personal estate unto such Grandchildren of my said Wife, being the children of my only Step son, as are then living, and unto the child or children of such Grandchild or children as are then dead, such child or children to take the intended share of the parent or Grandchild of my said Wife. This devise of such remainder is to such Grandchildren, (or their children,) and their heirs, in absolute estates, and in equal interests, and as tenants and distributees in common. But the Real Estate which such Grandchildren shall receive under this Will after

the death of my said Wife, shall not be divided among such
 15 Grandchildren or the children of such as may be dead, [when
 the time of division arrived,]* until the youngest living
 Grandchild shall be twenty-two years of age. But it is nevertheless
 provided that in the division of the said remainder of Real and

[* Word enclosed in brackets erased in copy.]

personal estate, that Mrs. Kearney, formerly Bertha Dill, nor her child or children, shall be entitled to or receive any part of such remainder of Real and personal estate, said Mrs. Kearney not being included with other Grandchildren.

Fourth. I empower my said Executors, or the survivor of them to sell any part of the Real estate I shall leave at my death, whenever there shall be, in their judgment, good reason for so selling and to convey such by good Deed to the purchaser or purchasers thereof, in fee simple estate, and without any liability on the part of such purchaser or purchasers to see to the application of the purchase money, which shall be paid or properly secured before such conveyance is made. And the said purchase money shall be reinvested, unless needed for the payments provided by the part marked "First" of this Will, by said Executors, or the survivor of them, in some good and safe way, and the income therefrom, less expenses and charges about such, shall be paid by said Executors or Executor, to my said Wife while she lives. All income from personal estate or investments shall be received by said Executors or Executor and paid to my said wife, but the income or use of any real estate covered by this Will, my said Wife shall have the right to collect or control herself directly.

On the death of my said Wife, my said Executors or the survivor of them, or whoever lawfully acts in their stead, shall
16 distribute all personal estate then lawfully remaining in their hands, in the manner hereinbefore provided. And the power of said Executors to make any sale of said real estate shall cease with the death of my said wife. All real estate I may acquire hereafter is to be covered by this Will, if I still own it when I die.

Fifth. I hereby nominate and appoint my friends, Joseph J. Waters and Oliver P. Johnson, and the survivor of them, as executors, or Executor of this my last Will. And hereby revoke any and all Wills by me made before this one.

In testimony of all which I have hereunto set my hand and seal this 13th day of February in the year of our Lord Eighteen hundred and ninety-six.

PETER DILL. [SEAL.]

Signed, sealed, published and declared by Peter Dill, the before named Testator, as and for his last Will and testament, in the presence of us, who, at his request, in his presence and in presence, of each other, have subscribed our names as Witnesses thereto.

THOS. H. BREMERMAN.
LOUIS B. DU FIEF.
WM. HANLON.

- 17 The Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

SEPT. 24, 1900.

DISTRICT OF COLUMBIA, *To wit:*

This day appeared Thos. H. Bremermann, one of the subscribing witnesses to the foregoing last will and testament of Peter Dill, deceased, late of the District of Columbia, and solemnly made oath on the Holy Evangelists of Almighty God that he did see the Testator therein named sign said will; that he published, pronounced, and declared the same to be his last will and testament; that at the time of so doing he was, to the best of his apprehension of sound and disposing mind, and capable of executing a valid deed or contract; and that his name as witness to the aforesaid will was signed in the presence and at the request of Testator and in the presence of the other subscribing witnesses, who also signed in his presence and in the presence and at the request of the Testator.

Test:
8225.

LOUIS A. DENT,
Register of Wills.

- 18 The Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

SEPT. 28, 1900.

DISTRICT OF COLUMBIA, *To wit:*

This day appeared Louis B. du Fief and Wm. Hanlon two of the subscribing witnesses to the foregoing last will and testament of Peter Dill, deceased, late of the District of Columbia, and severally made oath on the Holy Evangelists of Almighty God that they did see the Testator therein named sign said will; that he published, pronounced and declared the same to be his last will and testament; that at the time of so doing he was, to the best of their apprehension, of sound and disposing mind, and capable of executing a valid deed or contract; and that their names as witnesses to the aforesaid will were signed in the presence and at the request of Testator and in the presence of each other and of the other subscribing witness who also signed in their presence, and in the presence and at the request of the Testator.

Test:
8225.

LOUIS A. DENT,
Register of Wills.

- 19 Supreme Court of the District of Columbia, Holding Probate Court.

DISTRICT OF COLUMBIA, *To wit:*

I, Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court, do hereby certify, That the

foregoing is a true copy of the original will of Peter Dill deceased, and the proof thereof, filed and recorded in the office of the Register of Wills for the District of Columbia, Clerk of the Probate Court, aforesaid; and that the said will, after having been duly proven, as will appear by the proof thereto attached, was, by order of the said Court, in accordance with the laws of the District of Columbia, admitted to probate and record on the 28th day of September, A. D. one thousand nine hundred, and the 5th day of February, one thousand nine hundred and two.

I further certify, That I have compared the foregoing copy of said will, and the proof thereof, with the original record in said office, and find it to be a full, true and correct transcript thereof.

Witness my hand and the seal of the said Probate Court, this 22nd day of January, A. D. 1907.

[SEAL.]

WM. C. TAYLOR,
*Deputy Register of Wills for the District of
Columbia, Clerk of the Probate Court.*

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"EXHIBIT B."

Liber 2512, Folio 429 et seq.

Recorded Sept. 28, 1:37 P. M., 1900.

Trust.

ANN DILL et al. to NORMENT & COLE, Tr's.

This indenture, Made this thirtieth (30th) day of August in the year of our Lord one thousand eight hundred and ninety-eight by and between Ann Dill, widow, and Maurice Dill, William P. Dill, Marian A. Dill, John H. Dill, Edward J. Dill, Leo Dill heirs at law and devisees of the late Peter Dill, deceased, of the City of Washington, District of Columbia, parties of the first part, and Clarence F. Norment and Charles C. Cole, trustees, parties of the second part: Whereas, the parties of the first part have signed a contract of even date herewith, agreeing to compensate Samuel H. Lewis and John H. Adriaans for professional services to be rendered in procuring the Probate of the will of the late Peter Dill of Washington, D. C. in the event of said Lewis et al. succeeding in defeating a Caveat to said Will, and securing the probate thereof as more fully set out in the contract referred to. And whereas, the parties of the first part desire to secure the execution and fulfillment of said contract. Now therefore, this indenture witnesseth, that the parties of the first part, in consideration of the premises, and of one dollar lawful money of the United States of America, to them in hand paid by the parties of the second part, the receipt of which, before the sealing and delivery of these presents, is hereby acknowledged, have given, granted, bargained and sold, aliened, enfeoffed, released and conveyed, and do by these presents give, grant, bargain and sell, alien, enfeoff, release and convey unto

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the parties of the second part, their heirs and assigns, the following described land and premises, situate in the District of Columbia and in Charles County Maryland known and distinguished as the right, title, and interest of the said Peter Dill in all real estate located in Charles County, Maryland and in the District of Columbia, whereof said Peter Dill died seized and possessed; together with all and singular the improvements, ways, easements, rights, privileges and appurtenances to the same belonging, or in anywise appertaining, and all the estate, right, title, interest and claim, either at law or in equity or otherwise however, of the parties of the first part, of, in, to or out of the said land and premises. To have and to hold the said land — premises and appurtenances unto and to the only use of the parties of the second part their heirs and assigns. In and upon the trusts nevertheless, hereinafter declared; that is, in trust to permit said parties of the first part, their heirs or assigns, to use and occupy the said described land and premises and the rents, issues, and profits thereof to take, have and apply to and for their sole use and benefit, until default be made in the execution of said contract. And upon the full satisfaction of said contract, to release and reconvey the said described premises unto the said parties of the first part, their heirs and assigns, at their cost. And upon this Further Trust, upon any default or failure being made in the payment of said contract to sell the said described land

22 and premises, at public auction, upon such terms and conditions, at such time and place after such previous public advertisement as the parties of the second part, their heirs, or the trustee acting in the execution of this trust shall deem advantageous and proper; and to convey the same in fee simple to, and at the cost of, the purchaser or purchasers thereof who shall not be required to see to the application of the purchase money, and of the proceeds of said sale or sales: First, to pay all proper costs, charges and expenses including all taxes, general and special, due upon said land and premises, at time of sale, and to retain as compensation a commission of five per centum on the amount of the said sale or sales; second, to pay whatever may then remain unpaid of the said contract therein, whether the same shall be due or not, and last: to pay the remainder of said proceeds, if any there be, to said parties of the first part their heirs or assigns. And the said parties of the first part do hereby agree at their own cost, during all the time wherein any part of the matter hereby secured shall be unpaid or unsettled, to keep the said improvements insured against loss by fire, in the name and to the satisfaction of the parties of the second part, who shall apply whatever may be received therefrom to the payment of the matter hereby secured, whether due or not; and also to pay all taxes and assessments, both general and special that may become due on, or be assessed against said land and premises during the continuance of this Trust, and that upon any default or neglect to so insure or pay taxes and assessments, any party secured hereby may have said improvements

23 insured and pay said taxes and assessments, and the expense thereof, shall be a charge hereby secured and bear interest

at the same rate as the said indebtedness hereby secured. And it is further agreed that if the property shall be advertised for sale under the provisions of this Deed and not sold, then the said Trustees shall be entitled to one half the commission above provided, to be computed on the amount of the debt hereby secured. In witness whereof, the parties of the first part have hereunto set our hands and seals on the day and year first hereinbefore written.

ANN DILL—MAURICE DILL.	[SEAL.]
WILLIAM P. DILL.	[SEAL.]
MARIAN A. DILL.	[SEAL.]
JOHN H. DILL.	[SEAL.]
EDWARD J. DILL.	[SEAL.]
LEO DILL.	[SEAL.]

Signed, sealed and delivered in the presence of—

J. BARTON MILLER.

W. M. WEAVER,

Witness as to J. Henry Strokmeier.

WM. H. DILL.

DISTRICT OF COLUMBIA, *To wit:*

I, J. Barton Miller a Notary Public in and for the said District do hereby certify that Ann Dill, widow of Peter Dill deceased of the District of Columbia, who is personally well known to me as the grantor in and the person who executed the foregoing and annexed Deed bearing date on the thirtieth day of August A. D. 1898, personally appeared before me in said District and acknowledged the said Deed to be her act and deed. Given under my hand and official seal, this thirtieth day of August A. D. 1898.

[NOTARIAL SEAL.]

J. BARTON MILLER,
Notary Public, D. C.

24 STATE OF MARYLAND,
Baltimore City, To wit:

I, J. Henry Strokmeier a Notary Public in and for the State of Maryland in and for Baltimore City do hereby certify that William P. Dill adult and unmarried Marian A. Dill age 18 years, John H. Dill age 15 years, Edward J. Dill age 13 years Leo Dill age 9 years and Maurice Dill age 7 years, who are personally known to me as the grantors in and the persons who executed the foregoing and annexed Deed bearing date on the thirtieth day of August A. D. 1898 personally appeared before me in said City and each acknowledged the said Deed to be their act and deed. As Witness my hand and Notarial Seal this 2d day of September 1898.

[NOTARIAL SEAL.]

J. HENRY STROKMEYER,
Notary Public, D. C.

No. 1006.

STATE OF MARYLAND,
Baltimore City, sct:

I, Hereby certify, that J. Henry Strokmeyer Esquire, before whom the annexed acknowledgments were made, and who has thereto subscribed his name, was, at the time of so doing a Notary Public of the State of Maryland, in and for the City of Baltimore, duly commissioned and sworn and authorized by law to administer oaths and take acknowledgments. I further certify that I am acquainted with the handwriting of the said Notary, and verily believe the signature to be his genuine signature, In Testimony Whereof,
 25 I hereto set my hand and affix the seal of the Superior Court of Baltimore City, this 3rd day of September A. D. 1898.

ROBT. OGLE,
Clerk of the Superior Court of Baltimore City.

OFFICE OF RECORDER OF DEEDS,
 DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber 2512 folio 429 et seq., one of the Land Records of the District of Columbia.

In testimony whereof, I have hereunto set my hand and affix the seal of this office this 25th day of March, A. D. 1907.

[SEAL.]

R. W. DUTTON,
Deputy Recorder of Deeds, Dist. of Col.

26

"EXHIBIT C".

Renunciation of Trust by Charles C. Cole.

Liber 2530, Folio 17.

Recorded, October 4, 1900, 1:24.

Renunciation of Trust.

Whereas on the first day of October, 1900, it for the first time came to my knowledge that I had been named as one of two trustees in a certain deed of trust purporting to be made by Ann Dill, and others, to Clarence F. Normont and myself, to secure the payment of certain fees to Samuel H. Lewis and John H. Adriaans, which deed of trust bears date on the thirtieth day of August, 1898 but was not recorded until the twenty-eighth day of September, 1900. And whereas, the said appointment, as such trustee, was made without my knowledge or consent, I therefore now renounce of record such appointment and refuse to accept the said trust.

Witness my hand and seal this fourth day of October, A. D. 1900.

CHARLES C. COLE. [SEAL.]

DISTRICT OF COLUMBIA, *To wit:*

I, Harvey Given, a Notary Public in and for the said District of Columbia, do hereby certify that Charles C. Cole party to a certain instrument of renunciation bearing date on the fourth day
27 of October, A. D., 1900 and hereunto annexed, personally appeared before me in the said District, the said Charles C. Cole being personally well known to me as the person who executed the aforesaid instrument of renunciation and acknowledged the same to be his act and deed, given under my hand and official seal this fourth day of October, A. D. 1900.

[NOTARIAL SEAL.]

HARVEY GIVEN,
Notary Public, D. C.

OFFICE OF THE RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify, that the foregoing is a true and verified copy of an instrument as recorded in Liber 2530, Folio 17, one of the Land Records of the District of Columbia.

In Testimony Whereof I have hereunto set my hand and affixed the seal of this office this 6th day of October, A. D. 1909.

[SEAL.]

R. W. DUTTON,
Deputy Recorder of Deeds, D. C.

28

"EXHIBIT D".

Renunciation of Trust by Clarence F. Norment.

Liber 2537, Folio 86.

Recorded Oct. 31, 1900, 2:40 p. m.

Renunciation of Trust by Clarence F. Norment.

Whereas on the Twenty-ninth day of October, 1900, it for the first time came to my knowledge that I had been named as one of the two trustees in a certain deed of trust, purporting to be made by Ann Dill, and others to Charles C. Cole and myself, to secure the payment of certain fees to Samuel H. Lewis and John H. Adriaans, which deed of trust bears date on the thirtieth day of August, 1898 but was not recorded until the twenty-eighth day of September, 1900, and whereas the said appointment as such Trustee was made without my knowledge or consent, I therefore now renounce of record such appointment and refuse to accept the said trust, witness my hand and official seal this thirty-first day of October, A. D. 1900.

CLARENCE F. NORMENT. [SEAL.]

DISTRICT OF COLUMBIA, *To wit:*

I, Albert B. Ruff, a Notary Public in and for the said District of Columbia do hereby certify that Clarence F. Norment party to a

certain instrument of renunciation bearing date on the thirty-first day of October, A. D. 1900 and hereunto annexed personally
 29 appeared before me in the said District the said Clarence F. Norment being personally well known to me as the person who executed the aforesaid instrument of renunciation and acknowledged the same to be his act and deed, given under my hand and official seal this 31st day of Oct. A. D. 1900.

[NOTARIAL SEAL.]

ALBERT B. RUFF,
Notary Public.

OFFICE OF THE RECORDER OF DEEDS,
 DISTRICT OF COLUMBIA.

This is to certify, that the foregoing is true and vertified copy of an instrument, as recorded in Liber 2537, Folio 86, et seq. one of the Land Records of the District of Columbia.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of this office this 6th day of October, A. D. 1909.

[SEAL.]

R. W. DUTTON,
Deputy Recorder of Deeds, Dist. of Col.

30

Answer of John Adriaans.

Filed April 21, 1909.

* * * * *

First. This defendant admits to be true the allegations contained in the first paragraph of said bill.

Second. This defendant admits to be true the allegations contained in the second paragraph of said bill.

Third. This defendant admits to be true the allegations contained in the third paragraph of said bill.

Fourth. This defendant admits to be true so much of the averments contained in the fourth paragraph of said bill as alleges that said Peter Dill died testate and that his will was admitted to probate September 28, 1900; but calls for proof of the remaining allegations of said paragraph.

Fifth. This defendant states, in reference to the allegations contained in the fifth paragraph of said bill, that he was employed by complainants and said Ann Dill to defend said will against said Caveat, in co-operation with the executors named therein; and that as security for the services thus contemplated a lien was given upon the subject matter of the will, that a contemporaneous contract of compensation would be carried out by complainants and said Ann Dill.

Sixth. This defendant denies that any misrepresentations were made, or fraud exercised by him in procuring the execution of the contract and lien specified; and says that the statements in
 31 said paragraph that said papers were not read to, or by, complainants are absolutely false. This defendant distinctly

denies that it was represented to complainants that the object of said papers was to secure an allowance for Ann Dill.

Seventh. This defendant alleges that he rendered valuable services to complainants in said probate cause 8225, and that the allegations to the contrary are false.

Eighth. This defendant admits that neither of the trustees mentioned in the eighth paragraph of this bill accepted the trust and says that a bill (No. 21,889) is now pending to substitute new trustees for them.

Ninth. This defendant denies that any advantage was taken of said Ann Dill, and says that at the time she signed said papers (August 1898) she was in good mental and physical condition. This defendant denies that said deed in trust is null and void, either for an intrinsic or extrinsic reason, and says that the same was given by complainants, and taken by defendants, in good faith; and defendants' services have been given in reliance upon the efficacy thereof and have not yet been compensated. This defendant says that the sole object of complainants in attacking said trust, by this bill, is to defeat their liability to compensate defendants for the services so rendered. This defendant is entirely willing that complainants' property, derived through said will, should be released from the operation of said lien and trust, through substituted trustees, upon their settling with defendants for the compensation earned by them as aforesaid.

32 Tenth. This defendant says that complainant William P. Dill was of full age and intelligently signed said trust in 1898. He has allowed ten years to elapse before seeking to repudiate his action. The complainants, Marian A. Dill, John H. Dill and J. Edward Dill have waited beyond the statutory period, after arriving at age, to repudiate their action; and intermediately have acquiesced in the integrity of the conveyance. The complainants J. Edward Dill and Maurice E. Dill have not yet arrived at the age when they can either affirm or disaffirm said contract; and this right cannot legally be exercised for them by a guardian and next friend.

Eleventh. This defendant admits that the complainants can only obtain the relief sought by them in a Court of Equity; but says that they are not entitled to such relief because they do not offer to do Equity to defendants in tendering compensation for timely services rendered by defendants for complainants at their request and whereof they now enjoy the benefit.

Having thus fully answered said bill, this defendant prays to be hence dismissed with his reasonable costs in this behalf sustained.

JOHN H. ADRIAANS.

I do solemnly swear that I have read the answer by me subscribed and know the contents thereof; that the facts therein stated as of my personal knowledge are true; and those stated upon information and belief, I believe to be true.

JOHN H. ADRIAANS.

Subscribed and sworn to before me this 21 day of April,
A. D., 1909.

J. R. YOUNG, *Clerk*,
By R. P. BELEW, *Asst. Clerk*.

Answer of Samuel H. Lewis.

Filed July 1, 1909.

* * * * *

1. This defendant admits the allegations contained in the first paragraph of the bill of complaint.

2 & 3. He admits the allegations contained in paragraphs two and three of the said bill.

4. This defendant admits so much of the fourth paragraph of the said bill as alleges that said Peter Dill died leaving a last will and testament which was admitted to probate on September 28th, 1900, but calls for strict proof of the remaining averments of said paragraph so far as they are material to the issues in this cause.

5. This defendant answering the allegations of the fifth paragraph of said bill states that he was retained by one Ann Dill together with the complainants herein to defend the will of Peter Dill, in connection with the executors therein named, and that said Ann Dill and the complainants being without adequate means to pay necessary attorneys' fees the contract and lien set out in the bill of complaint was entered into by the complainants and Ann Dill.

34 6. Defendant states that he entered into the said employment at the special instance and request of the said Ann Dill, and he denies specifically and expressly that any misrepresentations were made or that any fraud was practiced by him in procuring said employment or the execution of the said contract. Affiant further says that the said papers were read over to the complainants and were apparently thoroughly understood by them as well as by the said Ann Dill.

7. This defendant avers that he spent considerable time and money in connection with the said probate cause 8225, and he believes rendered services of value to both Ann Dill and the complainants herein, both in the District of Columbia and in Charles Co., State of Maryland.

8. Defendant admits the allegations that neither of the trustees named accepted the trust, but avers that their reasons for declining were not those stated by the complainants therein.

9. This defendant denies that any advantage whatever was taken by affiant of Ann Dill or of any of the complainants herein, and avers that at the time the said paper was executed the said Ann Dill was perfectly competent to execute a valid deed or contract, and that said Ann Dill and the complainants herein thoroughly understood the transactions complained of. Defendant further says that he is willing to accept a reasonable compensation for the services rendered in connection with the contest of the will and the administration of the said estate.

10. Defendant says that the complainant William P. Dill
 35 was of full age at the time said contract was entered into,
 and thoroughly understood the terms and necessity therefor,
 that any allegation that your affiant misrepresented the terms of
 said contract to him or to anyone else is absolutely false.

11. This defendant denies expressly any and all allegations in
 the said bill of complaint that any deception or misrepresentations
 were practiced or made by him in procuring the said contract and
 avers that he entered into said employment in good faith at
 the special request of said Ann Dill and the complainants herein,
 and he further avers that he performed services in connection with
 said contract for which he is entitled to reasonable compensation.

Having answered fully this defendant prays that he may be dis-
 missed hence with his reasonable costs.

SAMUEL H. LEWIS.

DISTRICT OF COLUMBIA, ss:

I do solemnly swear that I have read the foregoing answer by me
 subscribed and know the contents thereof; that the facts therein
 stated are true to the best of my knowledge, information and belief.

SAMUEL H. LEWIS.

Subscribed and sworn to before me July 1, 1909.

[SEAL.]

SAMUEL H. WALKER.

Notary Public.

36

Replication.

Filed July 2, 1909.

* * * * *

The complainants hereby join issue upon the answer of the
 defendant, Samuel H. Lewis, filed herein.

DANIEL O'DONOGHUE,

Solicitor for Complainants.

37

Testimony on Behalf of Complainants.

Filed November 3, 1909.

* * * * *

Met pursuant to notice at the office of Daniel W. O'Donoghue,
 Esq., Century Building, Washington, D. C. at 2:00 o'clock P. M.,
 on September 25, 1909, to take testimony on behalf of the com-
 plainants:—

Present: D. W. O'Donoghue, Esq., Solicitor for the complain-
 ants; John H. Dumler, Esq., Solicitor for the complainants, in the
 State of Maryland; John Lewis Smith, Esq., Solicitor for the de-
 fendant, Samuel H. Lewis; E. L. Gies, Esq., Solicitor for the de-

fendant, John H. Adriaans; The Defendant, John H. Adriaans, in person; and the Examiner, Arthur A. Alexander.

Whereupon Mr. Gies moved that all witnesses except the one testifying be excluded from the room during the hearing; which motion was complied with.

Whereupon ANNIE L. DILL, having been first duly sworn, testified as a witness for the complainants as follows:

By Mr. O'DONOGHUE:

Q. Mrs. Dill, please state your full name. A. Annie L.—Annie Louisa Dill.

Q. And your address? A. 721 East 20th street.

Q. Baltimore? A. Baltimore, Maryland.

38 Q. What was your husband's name? A. William H. Dill.

Q. Of what place was he a resident? A. Baltimore.

Q. When did he die? A. 1908, November, 1908.

Q. How long ago? A. 1908.

Q. You mean November, 1898. A. November, 1898, yes, 1898.

Q. What was your husband's mother's name? A. Ann Dill.

Q. What was Ann Dill's husband's name? A. Peter Dill.

Q. You are the mother of the complainants to this suit? A. I am.

Q. When did Ann Dill just mentioned die? A. I could not tell—I—now——

Q. When did Ann Dill, widow of Peter Dill, die? A. I could not tell—perhaps May, 1905.

Q. How old was she *was* she died? A. In her 86th year.

Q. When did Peter Dill die? A. December, 1907.

Q. You mean 1897? A. 1897, yes, 1897.

Q. And he left a last will and testament? A. He did.

Q. And your children are the beneficiaries mentioned in that last will and testament? A. They are.

39 Q. Was your husband a son of Peter Dill? A. He was an adopted son.

Q. Did Peter Dill have any other adopted sons? A. None, no.

Q. How many children did you and your husband have? A. Ten.

Q. Are they all living? A. Three died.

Q. What are the names of the three who died? A. Nellie A. Dill, Harry J. Dill, and Bertha L. Dill.

By Mr. DIES:

Q. Is that the one known as Bertha Kearney? A. Yes.

By Mr. O'DONOGHUE:

Q. When did your children Harry Dill and Nellie Dill die? A. I could not tell now. I could not say now. I—well——

Q. Well, about when? A. Nellie Dill died—I could not say—I could not give that now.

Q. About how long ago? A. Well, about fifteen——

Q. I will ask if they both died before the death of Peter Dill—before the death of their grandfather? A. Yes, they did.

Q. And when did your third child, Bertha Dill Kearney, die? A. In 1902.

40 Q. Was she the one who was expressly excepted and excluded from any and all share in the estate of Peter Dill under the will? A. She was, yes.

Q. Will you give me the names of the remaining children? A. William P. Dill.

Q. How old is he now. A. 33.

Q. Go ahead. A. Marian A.

Q. Dill? A. Marion A. Dill.

Q. And her age? A. It is not Dill now, 29.

By Mr. GIES:

Q. How old? A. 29 years.

By Mr. O'DONOGHUE:

Q. Go ahead, and give the names of the remaining children and their ages. A. John H. Dill, 26; J. Edward Dill, 24; Leo A. J. Dill, 20.

Mr. GIES:

Q. Twenty? A. Twenty, and Maurice E. Dill, eighteen.

By Mr. O'DONOGHUE:

Q. Who was the guardian of these two minor children? A. Myself, Annie L. Dill.

41 Q. You were appointed guardian of these two minor children by the Supreme Court of the District of Columbia?

A. Yes, I was.

By Mr. GIES: She has mentioned the names of only six children, and she said that she had ten children, and that three died, and she has named only six living.

A. I have only these six living.

By Mr. O'DONOGHUE:

Q. You have named only six children living. Are there only three dead? A. Yes, only three, and then there was an infant.

Q. There was an infant that died? A. Yes.

Q. What was the name of that infant? A. Well, he was only an infant—the name was Joseph.

Q. And his age when he died? A. Well, I could not say, I—

Q. He died before the death of Peter Dill? A. He died when he was about only a week old and long before the death of Peter Dill.

Q. So there are four children dead and six living? A. Yes.

Q. And those are the six whose names and ages you have given? A. Yes.

Q. I presume there is no question as to Peter Dill owning the

real estate mentioned in paragraph three of the bill, and that we need not go into proof, as to that, and——

By Mr. GIES: That is for you to say; that is for you to decide; I think that——

42 By Mr. SMITH: I have no question as to that, and——

By Mr. GIES: The admissions in the answer are probable proof that he owned the real estate, but it is for you to decide whether to prove these things affirmatively or not, and——

(Mr. Brandenburg at this time came into the room, and, after a short conversation with counsel, withdrew from the room, after making the statement that he appeared at the hearing only as a visitor.)

Q. Did Mrs. Ann Dill leave any will? A. No.

Q. On the death of Peter Dill, do you know whether his widow, Mrs. Ann Dill, ever employed John H. Adriaans or Samuel H. Lewis, or either of them, to represent her in the matter of the estate of Peter Dill? A. I don't know.

By Mr. GIES: One moment. I object as——

By Mr. SMITH: She has said she does not know.

By Mr. GIES: Your answer is that you don't know? A. I don't know.

By Mr. O'DONOGHUE:

Q. Have you any knowledge or information of any agreement that said Ann Dill entered into with Mr. Adriaans or Mr. Lewis, or either of them, in reference to legal services to be rendered by them, or either of them, in reference to the estate of Peter Dill? A. I have none.

Q. When did you first meet either Mr. Adriaans or Mr.
43 Samuel H. Lewis? A. August, 1908.

Q. 1898? A. 1898, about that time to the best of my knowledge.

Q. Had you ever seen either of these gentlemen before that time? A. I had not.

Q. Had you ever communicated with them, or either of them, directly or indirectly before that time? A. I had not.

Q. Did any of your children communicate with Mr. Adriaans and Mr. Lewis, or either of them before that time? A. What my oldest son may have done I don't know, but——

By Mr. SMITH: I object to a statement as to what her children may or may not have done, it being clearly hearsay as to that and being impossible for her to state what other parties may have done in this matter.

Q. To your knowledge had your children, or any of them, had any communication or dealings with Mr. Adriaans or with Mr. Lewis, or either or both of them, prior to this time in August, 1898, to your knowledge? A. They had not.

Q. And had you any communication or dealings with these gentlemen, or either of them, prior to that time? A. I had not.

Q. When did you first see either of these gentlemen? A. In August, 1908.

Q. 1898? A. 1898, I always get mixed on that.

44 Q. State what took place when you first met these gentlemen, either of them, and where the meeting took place. A. At my home No. 1628, no, Asquith street, 1330.

Q. Baltimore? A. Yes, Asquith street, Baltimore.

Q. What was the occasion of this interview? A. I have forgotten anything about that. The only thing was that this man came there for the money and to sign a paper.

Q. What man? A. I could not tell whether it was Mr. Lewis or Mr. Adriaans, I could not say.

Q. What did he say? A. He said he wanted them to sign a paper for Mrs. Ann Dill to get her some money, to Mr. Waters—to get her some money. He said it was for that—I——

By Mr. GIES: I object to the answer because the party is not identified as either Mr. Adriaans or Mr. Lewis.

Q. Do you know whether the gentlemen that called on this occasion was Mr. Adriaans or Mr. Lewis? A. I could not tell—I could not say which one, I——

Q. Well, what is your best recollection? A. I could not tell whether it was him (indicating Mr. Adriaans) or Mr. Lewis, but I think if any it was Mr. Lewis——

Q. Did Mr. Adriaans come to see you later? A. Yes, sir, later.

Q. Could you identify Mr. Adriaans as the one who——

45 A. Not any more than he was short and——

Q. Did he tell you his name was Adriaans?

By Mr. GIES: I object to counsel prompting the witness, and move to strike out the question.

By Mr. SMITH: Mr. Lewis is also short, and——

Q. What took place at this meeting when this gentleman either Mr. Lewis or Mr. Adriaans, called the first time? A. He just called there, and the children were there, to get them to sign the paper.

Q. Whose children? A. My children.

Q. How many children were at home when he called? A. Five, because the sixth was not at home.

Q. Who else was there at your home when this gentlemen, either Mr. Adriaans or Mr. Lewis, called? A. No one except my husband, William H. Dill.

Q. What was his condition of health at that time—your husband's condition of health at that time? A. His health was very bad you know he was not well at that time and his health was very bad.

Q. What occurred between the parties on the occasion of this gentlemen's call? A. I could not remember anything more except that my husband saying, that he did not wish to have anything to do with this matter, and this gentlemen was representing that the object was to get his mother some money, and my husband said he was too sick, and he——

By Mr. GIES: Question and answer objected and excepted to because this alleged person is not named or identified.

46 Q. What further did you- husband say? A. That is all he said at the time.

Q. Did he state anything about signing any papers? A. No, he did not because he had none to sign.

Q. Did he state anything about the children signing any papers? A. Yes, he told the children for them——

By Mr. GIES: One moment, was this conversation in the presence of either Mr. Lewis or Mr. Adriaans?

A. Yes, sir, in the presence of either Mr. Lewis or Mr. Adriaans, and he told them that they should not sign any more papers, and that he wanted nothing to do with it.

By Mr. SMITH: Was this conversation after they had signed?

A. It must have been after they signed.

By Mr. O'DONOGHUE:

Q. Were the papers read over to these children before they signed them? A. They might have been, but I don't know, I don't remember whether they were or not.

Q. Do you know what the papers were about? A. I don't know. I paid no attention as to that, we thought it was to get some money for the children's grandmother, Mrs. Ann Dill, but I don't know what it was about, they just signed them, and I don't know whether they was read over or not, they may have been but I don't remember whether they was.

Q. At that time when this paper, or these papers were signed by your children at your home, at the instance of Mr. Adriaans or Mr.

47 Lewis, each one of your children was, of course, eleven years younger than they are at the present time? A. They were.

Q. Was there anything else said on this occasion by Mr. Adriaans or Mr. Lewis as to the object of the paper, or papers, that were signed? A. I don't know, I don't remember.

Q. Did Mr. Adriaans or Mr. Lewis state anything about appearing as attorneys for the devisees under the will of Peter Dill, about——

By Mr. SMITH: I object to that question as leading.

By Mr. GIES: Same objection.

Q. Do you remember any conversation of that subject? A. I do not.

Q. When did you or any of your children, to your knowledge, next have any communication with Mr. Adriaans or Mr. Lewis? A. The day and year I could not tell at all.

Q. Well, what was the occasion of your next communication with Mr. Adriaans or Mr. Lewis, was it when——

By Mr. GIES: I object to the gentleman prompting the witness.

A. It was not until they sent over some papers to be signed but they had no communication with either of them before that time, before they wrote over to have these papers signed. We were to go to the notary's to have these other papers signed—the children and I.

Q. Have you the letter they sent with those papers. A.
48 No, I haven't.

Q. What became of it? A. Well, I guess it was destroyed.

Q. What did they state in this letter?

By Mr. SMITH: I object to any statement by this witness as to the contents of this letter she speaks of.

Q. Was the letter from Mr. Adriaans or from Mr. Lewis, do you remember? A. I could not tell which one but it was from either one of them, but which one I don't remember.

By Mr. GIES: I offer the further objection as to any statement by the witness as to this letter because all this testimony is improper here.

Q. You are sure it was either from Mr. Adriaans or from Mr. Lewis. You are sure it was from one of them. A. Yes.

Q. State what the letter set forth?

By Mr. SMITH: I object to a statement by the witness as to the contents of any letter at the present state of the record.

Q. Go ahead, state what the letter set forth? A. I cannot remember anything in the letter.

Q. Can you remember the substance of the letter? A. Only that the plea was for the money, for the children to sign to help their grandmother, to get the money for her.

Q. The money for whom? A. For their grandmother, Mrs. Ann Dill.

Q. What did you do with the papers enclosed with the
49 letter? A. Taken them to this attorney at law.

Q. What attorney? A. Why, this attorney there to sign before.

Q. In Baltimore? A. Yes.

Q. You mean the notary you executed the papers before? A. Yes, the notary.

Q. What was his name? A. I don't remember, I don't know.

Q. You mean you took the papers to Mr. Strokmeyer's office to have them signed before him? A. Yes, that's it, we went to see Mr. Strokmeyer's.

By Mr. GIES: I object to counsel prompting the witness.

Q. State what took place? A. Well, we went to Mr. Strokmeyer's.

Q. Well, what took place? A. Why, we, the children and myself, went to his office.

Q. That is, you and your children went to Mr. Strokmeyer's office to sign some paper, or papers, that were sent to you?

By Mr. GIES: I object. That is prompting the witness, and counsel has been doing it right along, and I expect to have this entire deposition suppressed on this ground.

Q. State what took place. A. I taken my five children
50 there, and they signed and we returned the papers to Mr.
Adriaans or to Mr. Lewis.

Q. Was that paper, or papers, ever read over to those children?
A. I don't know, I don't remember, it might have been, but I don't
know.

By Mr. SMITH:

Q. Where did you take the children? A. To Mr. Strokmeier's
office.

Q. Was Mr. Strokmeier your attorney? A. He was not. I only
went there to get a notary public.

By Mr. O'DONOGHUE:

Q. The letter stated that? A. Yes.

Q. In whose presence was this paper, or papers, signed? A. In
the presence of Mr. Strokmeier they were signed, and, of course, I
was there, I was present, and I didn't know Mr. Strokmeier before
that day.

By Mr. SMITH:

Q. They were signed at his office? A. They were signed at his
office on Lexington Street.

By Mr. O'DONOGHUE:

Q. Were the contents of any papers signed by your children
ever explained or read over to your children at the time? A. I
don't remember. Mr. Strokmeier may have read them over to
them, I don't know. I think——

51 By Mr. SMITH: I object to any statement as to what she
may think.

By Mr. O'DONOGHUE:

Q. How long were you there at Mr. Strokmeier's office? A. Not
more than ten or fifteen minutes.

Q. Did you sign any papers there? A. I didn't sign any on
that day.

Q. Did your children sign one or two papers on that occasion?
A. Only one that I remember of.

Q. Did your children, to your knowledge, thereafter sign any
other paper, or papers, at the instance of John H. Adriaans and
Samuel H. Lewis, or either of them? A. Not any.

Q. When did you next have any communication, directly or
indirectly, with Mr. John H. Adriaans and Samuel H. Lewis, or
either of them? A. I saw Mr. Lewis in the Fall following, in
November following, after my husband's death, and I told him I
didn't wish to see him any more.

Q. That was in the Fall of '99? A. Yes.

By Mr. GIES:

Q. In 1899? A. In '99, yes sir.

By Mr. O'DONOGHUE:

Q. When did you next see Mr. Adriaans or Mr. Lewis? A. 1628 East Oliver Street, Baltimore.

Q. Is that where you resided at the time? A. Yes, I resided there at the time.

52 Q. What further conversation occurred at that interview at your residence on Oliver Street? A. Not anything more.

Q. State fully what you said to him? A. I told him that I did not wish to see him or to have anything to do with him and it would please me not to see him any more, and that I had no interest or did not care to see him—that I had no interest or did not care to see him.

(Here there was a dispute between counsel as to exact language used by witness.)

Q. What did you say to him? A. That I had no further use for him, and that I did not care to see him again.

Q. Did you see Mr. Adriaans or Mr. Lewis subsequent to that? A. I don't remember—no, I didn't.

Q. Are you sure of that? A. Yes, never saw them any more.

Q. Did any of your children, to your knowledge, see them again? A. Not to my knowledge.

Q. Did you ever hear from either of them again? A. No, not from that day.

Q. Did Mr. John H. Adriaans and Mr. Samuel H. Lewis, or either of them, at any time, orally or by written communication, communicate with you or your children, to your knowledge, with reference to attorneys' fee for services in connection with the estate of Peter Dill?

By Mr. GIES: Objected to——

53 Q. Did they speak to you, at any time, or to any of your children, within your knowledge about a deed of trust to secure attorneys' fees?

By Mr. GIES: Objected to, as being——

A. No.

Q. Was there any contract ever entered into, orally or in writing, to your knowledge between your children or any of them and Mr. John H. Adriaans and Mr. Samuel H. Lewis, or either of them, with reference to services in connection with the estate of Peter Dill, deceased. A. None to my knowledge.

Q. Did you ever hear of any such contract being explained or read to your children by either of these gentlemen? A. I have not.

Q. What was the first you knew of this deed of trust that has been put of record against the property left to your children under the will of Peter Dill, deceased, which is involved in this suit? A. About a year and a half ago.

Q. From whom did you first hear of it? A. From Mr. Dumler.

Q. What is his first name? A. Mr. John Dumler, a lawyer.

Q. Where does he reside? A. Baltimore.

Q. Did Mr. John H. Adriaans and Mr. Samuel H. Lewis, or either of them, ever make any demand on you or on any of your children, to your knowledge, for the payment for any fee for alleged services for——

54 By Mr. GIES: Objected to as far as the children are concerned.

By Mr. SMITH: I object on the further ground that it is absolutely irrelevant whether Mr. Adriaans or Mr. Lewis ever made any demand on these children. The question is whether they made a valid trust for services performed.

Q. Answer the question? A. He did not.

Q. Did you, or did any of your children, know anything about the misrepresentations and fraud set forth in this bill up to——

Mr. GIES: I object to——

A. I don't know as——

Q. Up to a year and a half ago?

By Mr. SMITH: I object, because the——

Q. I want to understand you fully. You first had brought to your attention the misrepresentations and fraud set forth in the bill by Mr. Dumler about a year and a half ago? A. Yes.

Q. What was the condition of Mrs. Ann Dill's health from the time Peter Dill died up to the time of her death? A. Poor.

Q. What was the condition of her mind—of her business capacity? A. Not capable of transacting any business. She never had any clear mind on business.

By Mr. GIES: Objected to, because the witness is not qualified as an expert.

55 By Mr. SMITH: Objected to, because this witness is not qualified as an expert to give an opinion as to the mental condition.

Q. Did you see her during that time? A. During what time?

Q. From the death of her husband up to the time of her death?
A. I did.

Q. Did you talk with her? A. I did.

Q. How often did you see her? A. Once a year, I used to see her about once a year, and then I did not see her for four or five years, she was in Charles County, so I didn't see her then.

By Mr. SMITH: Then I object to any opinion by this witness as to the condition of Mrs. Ann Dill during that time, and——

Q. Did you see her at the time of——

By Mr. SMITH: I object and move to strike out her answer as to the state of mind of Ann Dill, because the witness is not competent to testify as to that, is not competent to offer an opinion as to her condition.

Q. How often did you see her after Peter Dill's death?

By Mr. GIES: I object, because——

A. Well, I——

Mr. GIES: The witness should not answer until I have stated my objection. She has repeatedly been answering before I state the ground of my objection.

Q. How often did you see Mrs. Ann Dill after the death of Peter Dill?

56 Mr. GIES: I object, because——

A. I used to see her at first more——

By Mr. GIES: I move to strike that out, and I insist that the witness should not answer until the ground of objection is stated.

(Here there was argument between counsel as to whether the witness answered before Mr. Gies stated objections, and as to whether Mr. O'Donoghue prompted the witness to answer before Mr. Gies concluded his objection.)

Mr. O'Donoghue stated that Mr. Gies was mistaken and Mr. Gies insisted that his objection, that the witness had already answered the question, be placed on record, and also that the witness was not qualified to testify as to the condition of Mrs. Ann Dill.)

Q. Have your children, or any of them, to your knowledge, or have you acting for them, since any of them became of age, ratified or sanctioned or in any way approved this deed of trust?

By Mr. GIES: I object for the reason that she could not possibly know what the children may, or may not, have done, and also that it would be a conclusion of law.

Q. Answer the question. A. I know what my children have done. I know all they have done. They have not approved of it.

By Mr. SMITH: I object to the question and answer as it involves a construction of law.

Q. That is all.

Cross-examination.

By Mr. SMITH:

57 Q. You signed this bill as one of the complainants?

A. Me?

Q. Yes. A. I suppose so.

Q. I mean this bill of complaint, you signed that?

By Mr. O'DONOGHUE: She signed as guardian.

Q. Did you sign the bill in this suit brought by Mr. O'Donoghue?

A. I did.

Q. And you were present when these papers were presented to your husband and your children? A. I was.

Q. Your recollection of that whole interview is very vague?

A. Yes.

Q. Could you tell us what the papers were? A. I could not.

Q. Did Mr. Adriaans, the gentleman here (indicating) submit

two papers to you and your husband and your children at your house in Baltimore? A. I cannot remember two—cannot remember any more than one.

Q. They were executed in your presence and also your husband's presence? A. They were.

Q. And the other was executed in the presence of Mr. Strokmeyer? A. Yes.

Q. You were present at both? A. I was.

58 Q. One occurred at your house and the other time was at Mr. Strokmeyer's office? A. Yes, sir.

Q. You have no recollection as to whether they were ever read or explained, or not, have you? A. The first might have been, but that one at Mr. Strokmeyer's office I don't think was.

Q. I would like to have you fix in your mind whether it was Mr. Adriaans or Mr. Lewis that called to see you? A. I could not say on oath, I could not.

Q. The statement in the bill of complaint that the papers were not read or explained at the time is not made on your knowledge? A. No.

Q. As a matter of fact you don't know whether they were or not? A. No.

By Mr. GIES:

Q. Have you any recollection of seeing this gentleman (indicating Mr. Adriaans) before? A. If so, he has grown stouter. I know the—I could not say whether it is Mr. Adriaans. I could not say whether this was Mr. Adriaans.

Q. Didn't you say there was a paper signed at your house in Baltimore? A. Yes.

Q. What kind of paper was it? A. I don't know.

Q. Then you stated that after that Mr. Dill made certain statements as to the children not signing any more papers? 59 A. Yes.

Q. It was after you went to Mr. Strokmeyer's office? A. Yes, it was after that.

Q. That was after the conversation your husband had with the children? A. Yes, that was afterwards.

Q. Then you say some papers were sent to you by mail? A. Yes, sir, those that were signed by Mr. Strokmeyer.

Q. You went to Mr. Strokmeyer's house? A. Mr. Strokmeyer's office.

Q. And you signed some papers there? A. Yes, sir.

Q. That was the deed of trust, was it? A. I don't know, I could not say.

Q. Was it a printed paper? A. Printed paper.

Q. Did not your husband sign as a witness to that paper? A. My husband was dead.

Q. Did not your husband sign as a witness to the paper you executed before Mr. Strokmeyer? A. My husband died before we went to Mr. Strokmeyer's office.

Q. When did your husband die? A. 1908, I mean 1898, in November.

60 Q. So your husband was dead before you and your children went to Mr. Strokmeier's office? A. Yes, sir.

By Mr. O'DONOGHUE: I think the witness is confused.

Q. Did not your husband sign as a witness to the papers which were executed before Mr. Strokmeier? A. I don't remember my husband signing. When we went to Mr. Strokmeier's office my husband was dead.

Q. Did you ever sign any papers? A. That I don't remember. I signed as guardian.

Q. Did you ever sign a power of attorney to Mr. Adriaans and to Mr. Lewis? A. I did not.

Q. I will ask you, didn't you sign a power of attorney to Mr. Adriaans and Mr. Lewis, as guardian? A. I signed a paper but I think it was for Mr. Waters.

Q. Is that your signature (handing witness a paper?) A. (After examination of paper.) Yes.

Q. Is that your letter? A. Yes, sir.

Q. Didn't you enclose this when you sent that letter? A. I may, but I don't remember.

Q. Don't you remember going before Mr. Thomas Kent Bradford, and executing this paper? A. I don't remember.

Q. I want these marked for identification. (Two papers
61 were handed to the examiner and marked by him "Exhibit—Adriaans—No. 1." and "Exhibit—Adriaans—No. 2," respectively.)

Q. Did I understand you to say that you first met Mr. Lewis and Mr. Adriaans, or either of them, in August, 1898? A. Yes, to my knowledge.

Q. I understood you to say that your husband died soon after that? A. Yes.

Q. In November, 1898, is that right. A. Yes.

Q. You stated that you saw Mr. Lewis shortly after your husband's death, and told him—— A. Either one, but I don't know which.

Q. How long after your husband's death? A. About eight months, about a year, it might have been longer, I don't know exactly, about a year.

Q. That would be about November, '99? A. That was the following year.

Q. Didn't you state that you had had no communication with Mr. Adriaans or Mr. Lewis and your children had none, after you saw Mr. Lewis in the Fall of '99? A. I had none after that.

Q. Either written or verbal? A. None, either written or verbal.

Q. Will you look at this letter and state in whose handwriting it is (handing witness a paper)? A. It is not mine.

Q. It is your signature? A. It is not my signature. It
62 is my name, but it is not my writing. I could not swear to that writing.

Q. Did you ever see it before? A. That I cannot remember.

By Mr. O'DONOGHUE: Read it through and see what it is.

Q. Yes, read it through and see if you remember anything about it? A. (After examination.) One of my children may have written it for me, I don't know.

Q. Do you recognize the writing on this envelope (Handing witness an envelope)? A. (After examination.) No, sir, I do not.

Q. Is that the writing of any of your children? A. No, sir, not to my knowledge.

(Mr. Gies handed the examiner a letter and an envelope, which were marked by the examiner "Exhibit—Adriaans—No. 3" and "Exhibit—Adriaans—No. 4", respectively).

Q. Will you look at this postal-card. Do you recognize the handwriting on that (handing witness a postal-card)? A. (After examination.) I do not.

Q. Is that your handwriting? A. It is not.

Q. Is it the handwriting of any of your children? A. It may be, but I could not say.

Q. Did you ever see it before? A. Not to my knowledge.

(Mr. Gies handed the examiner a postal-card, which was marked by the examiner "Exhibit—Adriaans—No. 5.")

63 Q. Do you recognize the handwriting on this postal-card (handing witness a postal-card)? A. (After examination.) I don't remember. It is not mine.

Q. Is not that the writing of Ann Dill, the wife of Peter Dill? A. It may be. She could only write her name. She could not write, only sign her name.

Q. Is that the writing of any of your children? A. I don't remember.

Q. Or of your deceased daughter, Mrs. Bertha Kearney? A. I don't remember, no.

(Mr. Gies handed the examiner a postal-card, which was marked by the examiner, "Exhibit—Adriaans—No. 6.")

Q. Will you look at this letter and tell me in whose handwriting that is (handing witness a letter)? A. (After examination.) I never saw that writing before.

Q. You say you never saw that writing? A. I don't remember seeing that, and don't recognize it at all.

Q. Do you recognize the handwriting on this envelope (handing witness an envelope)? A. (After examination.) No, I do not.

(Mr. Gies handed the examiner a letter and envelope, which were marked by the examiner "Exhibit—Adriaans No. 7" and "Exhibit—Adriaans—No. 8", respectively.)

64 Q. Mrs. Ann L. Dill, the wife of Peter Dill, was living in Washington? A. Yes—no. Mrs. Ann Dill was.

Q. Where did she die? A. In Washington.

Q. During the period from the death of Peter Dill where did she live? A. In Charles County, and in Washington.

Q. Did she ever live at Harriss' Lot, Charles County, Maryland? A. She did.

Q. When Mr. Lewis or Mr. Adriaans came over and brought the papers to be signed, did they bring any letter of introduction from Mrs. Ann Dill? A. The first time they did.

Q. Where is that letter? A. I don't know, probably destroyed.

Q. What was in the letter? A. I could not tell.

Q. Didn't she request you in the letter to sign the papers; didn't she ask you to do that? A. She did, to the best of my knowledge, to the best of my recollection, she did.

Q. When was that, in August? A. Yes.

Q. How many times after that did you see Mr. Lewis or Mr. Adriaans? A. Only once.

Q. Did you sign any papers at the time this letter of introduction was brought? A. That I don't remember.

65 Q. Didn't the children sign a paper? A. Yes, they did.

Q. At that time? A. Yes, sir.

Q. That was before you went to Mr. Strokmeier's office? A. That was before.

Q. And prior to signing the power of attorney before Mr. Bradford? A. I don't remember Mr. Bradford at all.

Q. But you identified your signature? A. Yes, but I don't know Mr. Bradford.

Q. What conversation took place when Mr. Adriaans presented this letter of introduction? A. That I don't remember.

Q. You don't remember that? A. I do not.

Q. But you remember the letter of introduction was presented? A. Yes, I do.

Q. And you don't remember what was said? You don't remember what Mr. Adriaans said? A. I don't.

Q. Or if it was Mr. Lewis? A. I don't remember which one that was.

Q. And you don't remember what was said? A. I don't remember.

Q. Was there any correspondence between you and Mrs. Ann Dill relative to their coming before they came? A. There was not.

66 Q. Or with your husband or children? A. Not to my knowledge, my husband was here.

Q. You stated that your husband had some conversation with the children after this interview in August, '98? A. He did. He told them not to sign anything more—not to sign any more papers.

Q. But notwithstanding that you took them to Mr. Strokmeier's office to have them execute some papers before Mr. Strokmeier? A. Yes; after I got his letter.

Q. Was that not the deed of trust you executed before Mr. Strokmeier? A. I don't know.

Q. Did your husband accompany you and the children on this occasion when you went to Mr. Strokmeier's? A. He was dead at the time.

Q. Was not that the paper which your husband witnessed? A. I don't know. He was dead at that time.

Q. You don't know how often Mrs. Ann Dill saw Mr. Adriaans or Mr. Lewis here in Washington? A. I don't know.

Q. And you don't know what took place between them? A. I don't know.

Q. Either from them or from her? A. I don't know.

Q. And you don't know what took place between your husband and Mr. Lewis or Mr. Adriaans in Washington, either from
67 him or from them? A. I don't know.

Q. Do you know what took place, if anything, between your oldest son and Mr. Adriaans or Mr. Lewis? A. I do not.

Q. Did he ever come to Washington? A. He lived here a while, a few weeks and stayed with his grandmother.

Q. And you don't know what took place between them? A. I don't know.

Q. Either from him or from them? A. I don't know.

Q. That is all.

Re-direct.

By Mr. O'DONOGHUE:

Q. Mrs. Dill, if this alleged deed of trust in this case was signed in August or September, 1898, it was signed before your husband died?

A. Yes, sir, before my husband died, yes, sir, the first one.

Q. I am asking you about the paper, or papers that were apparently signed before Mr. Strokmeyer. A. My husband was dead when we went to Mr. Strokmeyer's.

Q. If, as a matter of fact, it was signed in September, 1898, before Mr. Strokmeyer, you are mistaken in saying that when that paper was signed before Mr. Strokmeyer, that your husband was dead? A. I am not mistaken because when we went to Mr. Strokmeyer's my husband was dead.

68 Q. In what year did your husband die? A. Eleven months after Mr. Peter Dill died, in November, 1898.

Q. Then if this paper was signed before Mr. Strokmeyer in September, 1898, it was signed before your husband died? A. It was not signed before my husband died.

Q. I ask you, as a matter of fact, if it was signed before Mr. Strokmeyer in September, 1898, it was signed before your husband died? A. My husband was dead at that time.

Q. Mrs. Dill, your husband died in what year? A. In 1898.

Q. In November, 1898? A. Yes.

Q. If the paper was signed on the second day of September, 1898, it was signed before your husband died, was it not? A. Well, that is something strange to me. I don't think I signed any paper there during my husband's life.

Q. May you not be mistaken about that? A. Yes, I may be mistaken about that. I was so full of trouble at the time that I may be mistaken, but it is very strange to me if I signed any paper there before he died.

Q. Was your husband very sick in the Fall of 1898? A. Yes, sir, he was very ill for some time. He had a cancer and was very ill before he died.

69 Q. He was very ill for sometime before he died? A. Yes, sir.

Q. What did you state about Mrs. Ann Dill's capacity for writing? A. She could not write. All she could do was to sign her name, but she could not write—just sign her name. If there were any letters written by Mr. Ann Dill, she had them written for her, for she could write her name and that is all she could write.

Q. Can you state positively whether the last interview you had either with Mr. John H. Adriaans or Mr. Samuel H. Lewis occurred one or two years after your husband's death? A. It might have been two years; positively it was not any longer. I know it was not any longer than two years, and it may not have been that long.

Q. And when you state it was eight or nine months are you certain about that? A. I am not certain. It might have been eight or nine months, or it might have been two years.

Recross.

By Mr. GIES:

Q. Was not your husband living when the paper was signed at your house? A. He was.

Q. Was Mr. Strokmeyer present at your house when the paper was signed there? A. He was not. I never met Mr. Strokmeyer until I carried the children to his office.

ANNIE L. DILL.

70 Subscribed to before me this 16th day of October, A. D., 1909.

ARTHUR A. ALEXANDER,
Examiner.

Whereupon MARIAN A. DILL, having been first duly sworn, testified as a witness for the complainants as follows:

By Mr. O'DONOGHUE:

Q. State your name? A. Marian A. Dill.

Q. What is your address? A. 721 East 20th street.

Q. Baltimore, Maryland? A. Yes.

Q. What is your age? A. About twenty-nine.

Q. You are one of the complainants in this equity suit? A. Yes.

Q. You are the daughter of William H. Dill? A. Yes.

Q. Who was the adopted son of Peter Dill, and—— A. He was.

Q. And the real son of Ann Dill? A. Yes, he was.

Q. You are one of the beneficiaries under the will of Peter Dill, deceased? A. I am.

Q. Do you remember meeting Mr. John H. Adriaans or Mr.

Samuel H. Lewis in reference to—— A. I remember meeting one of them but I do not know which one it was. I remember
71 meeting this gentleman (indicating Mr. Adriaans), but I don't know which one it was. You see he was short, and I only met him once.

Q. When did that meeting occur? A. When my father was living.

Q. How long before he died? A. I don't know. The only time I ever remember seeing him—I don't know what month it was—it was in—it was while my father was sick.

Q. How long was your father sick? A. About a year.

Q. When did your father die? A. In November, 1898, right before the blizzard.

Q. You state that you met Mr. Adriaans or Mr. Lewis, now please state just—— A. I met one of them.

Q. Where? A. At our home. One of them, I don't know which one it was came there.

Q. That was the first time you ever saw either Mr. Adriaans or Mr. Lewis, either of them? A. Yes, sir.

Q. What occurred on this occasion when either Mr. Adriaans or Mr. Lewis came to your home? A. Well, I signed a paper, I remember I signed a paper, but I don't know what it was, I don't know what the paper was, I don't know what it was except it was to get my grandmother some money, something like that it was.

Q. How old were you then. A. Eighteen, I think.

Q. What house did this meeting occur in? A. Aisquith Street.

72 Q. Was that your home at that time? A. It was.

Q. What time of the day was it? A. It was in the evening, I know it was in the evening because it was after supper.

Q. Who was present at that meeting? A. I know my mother was there, and my father was there, but I don't know whether any of the children were there.

Q. Do you know whether more than one man was there? A. I don't know.

Q. Do you remember signing a paper there? A. The only time I remember signing is on Lexington Street. I don't remember signing at home at all. I only remember signing the paper at the office on Lexington street. I remember that because I went from work at lunch time down there to sign.

Q. But you may have signed a paper at home? A. Yes, I may have signed, but I don't remember it.

Q. This evening at your home when you first saw Mr. Adriaans or Mr. Lewis, will you please state the facts as to what occurred, as to what took place? A. That is all — remember.

Q. What is that? A. Why, being there with my mother and father and my father was sick at the time, and, if there was any paper signed there then I don't know about it; if we signed it, I don't know, but I know I signed on Lexington street.

Q. Do you remember any conversation that occurred or

73 anything that took place at your home that evening other than you have just stated? A. No, that is all I remember; that is all I can remember about it—being there with my mother and father.

Q. What was the occasion of your signing this paper on Lexington street? A. I don't know about that. All that I remember is that it was to get some money for my grandmother. That was all that was explained to me, and that is all I know about it. I remember going to the office on Lexington street to sign for the money so that my grandmother could get the money.

Q. When did this signing on Lexington street occur? A. About noon. We all had to get off from work to go there on Lexington street.

Q. How soon after this evening the gentleman called at your home was this signing on Lexington street? A. I don't know.

Q. Was it soon after or a long time after that evening at your home? A. I don't remember anything about that.

Q. Did you sign this paper on Lexington street before or after your father died? A. I don't remember.

Q. Was the paper you signed on Lexington street read over or explained to you? A. I don't remember whether it was read or not, but I know it was explained that it was to get my grandmother money.

74 Q. How long were you there in the office on Lexington street? A. Only a few minutes, because we had to go back—only had half an hour.

Q. How long did it take you to get to the office on Lexington street? A. At least ten or fifteen minutes.

Q. Each way. A. Yes.

Q. Did you get back in time for school? A. Yes, just made it.

Q. You left from the place you were going to school and got back in half an hour? A. Yes.

Q. So about how long were you in the office on Lexington street? A. We were in there only a few minutes.

Q. Well, about how long? A. I don't know.

Q. Was it the time you were working or going to school? A. Working at the time.

Q. Were you in the office 15 minutes? A. No, not that long.

Q. Well, how long? A. Only a very few minutes.

Q. You were working at the time, and it took you ten or fifteen minutes to go each way, and you went to the office on Lexington street and returned to work in half an hour, so it must have been only a few minutes you were in the office. A. Yes, only a few minutes.

75 Q. In what place did you go on Lexington street? A. I think Lexington and St. Paul.

Q. Do you know the man's name whose office you went to. A. I don't know. I never saw the place before.

Q. Did he read any paper to you? A. No, I don't remember.

Q. Who was there with you at the time? A. My mother and brothers.

Q. Well, did you ever see Mr. Adriaans or Mr. Lewis after the first time you saw them at your house. A. No, I never saw them after that.

Q. Did you have any communication, directly or indirectly, with them, or either of them? A. No.

Q. Or through any agency? A. No.

Q. What was your understanding of this paper you signed at this office on Lexington street?

By Mr. GIES: I object to that because the papers will speak for themselves.

A. All I remember is for the getting of the money for my grandmother—to help her. That is all. I don't think it was ever gotten for her.

Q. Did Mr. Adriaans or Mr. Lewis, or anyone else, ever state to you that the object in signing any papers that may have been signed by you was to employ Mr. Adriaans and Mr. Lewis as attorneys to represent you in the contest of your grandfather's will.

By Mr. GIES: Objected to as being leading—very leading.

76 Q. Answer the question. A. No.

Q. Did you, or did you not, ever employ Mr. John H. Adriaans and Mr. Samuel H. Lewis, or either of them, as attorneys in any legal proceedings in the District of Columbia in reference to the estate of Peter Dill, deceased? A. No, indeed, I didn't. I never employed them.

Q. Did you ever authorize anyone else to do so. A. I don't remember.

Q. Well, you would remember it if you had done so, would you not? A. Certainly.

Q. Did you ever ratify, sanction or approve this alleged contract of employment after you became twenty-one years of age? A. No, sir.

By Mr. GIES: Objected to as calling for a legal conclusion.

Q. Did you ever verbally or in writing, directly or indirectly, agree or undertake to pay Mr. Lewis or Mr. Adriaans, or both of them for any legal services to be rendered to you? A. No, sir.

Q. When did you first learn of this alleged deed of trust that is of record in the Recorder of Deeds' office in this city? A. Not until about a year and a half ago when they got our money—the cash.

Q. From whom did the cash come? A. From Mr. Waters.

77 Q. Through whom did you get that cash? A. Mr. Dumler.

Q. Mr. John H. Dumler? A. Yes, sir.

Q. A member of the Baltimore bar? A. Yes, sir.

Q. Was he the first one to inform you of the existence of this deed of trust? A. Yes, sir.

Q. What did you then do? A. We didn't do anything. My brother did.

Q. What did he do? A. He employed a lawyer.

Q. Whom. A. He employed you, Mr. O'Donoghue.

Q. Through Mr. Dumler? A. Yes, sir.

By Mr. GIES: That is all entirely immaterial.

Q. Did any of your brothers or sisters ever have any contract or agreement or papers explained to them by Mr. Adriaans or Mr. Lewis or anyone else, setting forth that it was an agreement of these gentlemen for lawyers' fees for them? A. I don't remember.

Q. You would have remembered if it had been the case? A. Certainly.

Mr. GIES: The question is objected to.

78 Q. Did Mr. Adriaans or Mr. Lewis, or both of them, as a matter of fact, ever render any legal service to you? A. No, nothing.

By Mr. GIES: Objected to as calling for a conclusion of law on the part of the witness.

Q. Did either Mr. Adriaans or Mr. Lewis ever make any demand on you for the payment of any fee for services rendered by them or either of them to you? A. No, sir.

Q. Neither before you reached the age of twenty-one years or after that? A. No, sir.

Q. When did your grandmother, Ann Dill, die? A. May the third.

Q. What year? A. I don't remember what year.

Q. About what year? I. I don't remember what year.

Q. Has it been three years? A. About three years, yes.

Q. About, 1906? A. Yes.

Q. How old was she when she died? A. About 86 years old.

Q. Do you remember the condition of your grandmother's health at the time of her husband's death in 1898? A. She was well, of course, I suppose so. We were children and did not get to Washington much.

Q. Do you remember the condition of her mind at that time? A. She was very easily influenced, and she did not understand the law.

79 By Mr. GIES: I object to the question and answer. The witness is not qualified as an expert to give an opinion as to the mental condition of anyone.

Q. Was she of sound mind?

By Mr. GIES: Objected to for the same reason.

A. I don't know.

Cross-examination.

By Mr. GIES:

Q. When were you born? A. 1880.

Q. What month? A. March the 18th.

Q. Now you say that either this gentleman (indicating Mr.

Adriaans) or Mr. Lewis came to Baltimore once to see you? A. Yes, sir.

Q. But you do not know which one it was? A. Yes, sir.

Q. Where did you see them? A. At our home on Aisquith street.

Q. Did you see them on Lexington street? A. No, sir.

Q. That was Mr. Strokmeier's office? A. Yes, sir.

Q. Did you see Mr. Lewis or Mr. Adriaans at Mr. Strokmeier's office when you were there? A. No, sir.

Q. You say that neither Mr. Lewis or Mr. Adriaans were present at Mr. Strokmeier's office when you were there? A. No, sir, only my brothers and my mother.

80 Q. How long before that had you seen Mr. Adriaans or Mr. Lewis? A. I don't know, I saw them before my father died.

Q. When you went to Strokmeier's office was your father there? A. No, sir.

Q. As a matter of fact did not your father go with them to Strokmeier's office? A. Oh, no.

Q. Was not your father present at your house when Mr. Strokmeier took the acknowledgment of these papers? A. I don't remember any other gentleman being there.

Q. Did not your father sign some papers as a witness? A. I don't recall that.

Q. And your father died when? A. 1898.

Q. November the 26th, is that right? A. Yes, sir.

Q. When were you at Mr. Strokmeier's office on Lexington street? A. I do not recall.

Q. Could not your father have gone to Mr. Strokmeier's office, and—— A. I don't remember whether he was living or dead at that time I went to Mr. Strokmeier's office.

Q. What was his condition about three months before he died? A. Very poorly.

81 Q. Did he go out of the house? A. He used to go to the doctor's.

Q. Do you remember of his going anywhere else? A. No, sir.

Q. Was he confined to his bed? A. Yes, sir, about two months before he died.

Q. Before he died? A. Yes, sir.

Q. What was his condition in August, 1898? A. He was sick then.

Q. Was he confined to the house? A. He was not working.

Q. He was not confined to the house? A. I know he was not.

Q. What did Mr. Adriaans or Mr. Lewis say to him, in your presence, at Aisquith street? A. I don't remember anything that they said.

Q. Did this gentleman, whether Mr. Adriaans or Mr. Lewis, have a letter of introduction? A. I don't recall.

Q. As a matter of fact, was not there some correspondence with your grandmother here in Washington telling you that—— A. All I remember is that we were to sign to get her the money.

Q. Who told you that? A. I don't know who told me, and I don't know whether it was my mother or my father.

Q. Did this gentleman, when *they* came, tell you that? A. I don't remember.

82 Q. When you signed the papers at Strokmeyer's office neither Mr. Adriaans or Mr. Lewis were present? A. No.

Q. Was there anything said at the time about signing to get the money for your grandmother? A. I don't remember.

Q. Well, when was this statement made about getting the money for your grandmother, before or after you signed? A. I don't know. It was before we signed at the lawyer's office on Lexington street.

Q. And you don't know by whom? A. I don't know.

Q. But you are quite sure that this gentleman (indicating Mr. Adriaans) did not tell it to you? A. I don't know.

Q. What time of day was it the gentleman called at your house? A. Evening.

Q. What time? A. After supper.

Q. Was it not in the afternoon? A. No, I had to work, and so I was never at home until after six o'clock.

Q. Where was Mr. William P. Dill working at that time? A. I don't know.

Q. Was he not working in a factory and did they not go out to the factory to see him? A. Either Mr. Adriaans or Mr. Lewis called at his place.

83 Q. What were his hours of work? A. He used to work overtimes.

Q. What was his regular time? A. From seven to six.

Q. The witness is now handed Exhibit marked No. 5. Do you know whose handwriting that postal-card is? (handing witness a postal card). A. I don't know who wrote that, whether my mother wrote it or not. I don't know (after inspecting the card).

Q. Well, what is your belief about it? A. I don't know.

Q. Look at the address on the other side. A. It looks like my sister's or mine, but I don't know.

Q. Your sister, Mrs. Kearney? A. Yes.

Q. You think it might be yours or hers? A. Yes.

Q. Was she living with your mother at the time? A. Yes, sir.

Q. The witness is now handed "Exhibit—Adriaans—No. 3" and "No. 4". Will you please state in whose handwriting Exhibit No. 4 is, if you know (handing witness an envelope)? A. That is about the same writing.

Q. And you don't know whose handwriting it is? A. I don't know.

Q. Look at No. 3. and see if you can refresh your recollection by looking at that (handing witness a letter)? A. It must have been my sister's for I do not remember writing anything like
84 that. My sister must have written this.

Q. Did you or your sister ever write letters for your mother? A. Yes, very often.

Q. At her request? A. Yes, sir.

Q. Was your sister, Mrs. Kearney, older than you? A. Yes, sir, she was older than I am, about four years more.

Q. Probably being older, it might have been her handwriting?

A. It might have been, but I don't remember writing that blue letter.

Q. Do you know a notary public named Bradford in Baltimore?

A. No, sir.

Q. Did you ever see this letter before. The witness being handed "Exhibit—Adriaans—No. 2" (handing witness a letter)? A. Do you wish me to read this?

Q. If you wish to. A. (After examination.) This is my mother's handwriting.

Q. Have you any recollection of this paper? The witness is handed "Exhibit—Adriaans—No. 1" (handing witness a paper). Whose signature is this right here (indicating)? A. My mother's.

Q. The same handwriting as the letter? A. Yes, sir.

85 By Mr. SMITH:

Q. At the time these first papers were executed you were employed, were you not? A. Yes, sir.

Q. You were then practically grown? A. I was about 18.

Q. And your recollection of that interview and of when the other papers were signed, is very vague, you have said? A. Yes, sir.

Q. You have stated all you remember about that interview and when the other papers were signed? A. Yes, sir.

Q. Then the allegations in the bill, these statements which you have signed as to misrepresentation and fraud were not made on your knowledge at all? A. No, sir.

Q. That is all.

Redirect.

By Mr. O'DONOGHUE:

Q. When you state that these allegations as to misrepresentation were not made on your knowledge, do you mean that you had any knowledge that Mr. Adriaans and Mr. Lewis were acting as attorneys for you? A. I thought they were acting for my grandmother, not for us.

Q. I understand you to state that the only information you had in reference to those papers you signed—all that was represented
86 to you was that they were made, they were signed, for the purpose of getting money for your grandmother? A. Yes, sir, that is all.

Q. And that representation was made to you at the first time you signed any papers? That was what they represented to you? A. Yes, sir.

By Mr. SMITH: I object as to all of this unless they are connected with one or the other of the defendants to this bill, and I object further to the leading character of the last question asked by Mr.

O'Donoghue, and move to strike the whole of this re-direct examination from the record.

MARIAN A. DILL.

Subscribed to before me this 16th day of October, A. D. 1909.

ARTHUR A. ALEXANDER, *Examiner*.

Whereupon JOHN H. DILL, having been first duly sworn, testified as a witness for the complainants as follows:

By Mr. O'DONOGHUE:

Q. What is your name? A. John H. Dill.

Q. Residence? A. 1226 East Lafayette Avenue, Baltimore.

Q. How old are you? A. I am 26 years of age.

Q. You are one of the beneficiaries under the will of Peter
87 Dill, deceased? A. I am.

Q. And one of the complainants to this suit? A. I am.

Q. When did you first meet either Mr. Adriaans, this gentleman here (indicating Mr. Adriaans) or Mr. Lewis? A. I don't know, I don't remember ever meeting them. I cannot recall. I remember the names.

Q. In what connection? A. One of them called at our house.

Q. When? A. I cannot recall.

Q. Well, as near as you can? A. It was in the Fall before my father died. Q. When did your father die? A. In '97.

Q. '97? A. '97.

Q. Are you not mistaken? Was it not in '98? A. It was the year before the blizzard.

Q. The blizzard was in 1899. A. Then it was in '98 he died.

Q. Where did you meet this gentleman? A. At our house, 1330 Aisquith Street, Baltimore.

Q. What took place? A. I could not say. I don't know. I don't recall much.

Q. Well, what do you recall? A. Well, as far as I remember it was supper time, and we were just finished our supper, in fact we were sitting in the kitchen, in the dining room, and my mother
88 and my father were in the parlor talking to a gentleman, and I don't know whether it was Mr. Adriaans or Mr. Lewis, and we were sitting there, and a time elapsed, and then we were asked to go in, and——

Q. In where? A. To the parlor, where my mother and father and this gentleman were, and we were to go in one by one, and I went in, and I was asked to sign my name, and I signed my name and I left.

Q. What was the purpose of signing your name to that paper? A. Well at that time—I do not really remember what was the reason. I know they were trying to get money for our grandmother.

Q. And what was stated, if you remember, was the object of signing that paper? A. What was that?

Q. What was the object of that paper you signed? A. To get money for our grandmother.

Q. That was the object as told to you? A. As told to me?

Q. Yes. A. Nothing was told to me, it was only a surmise.

Q. Was the paper read to you that you signed? A. No, sir.

Q. Did you ever see Mr. Adriaans or Mr. Lewis after that time you signed the paper? A. I did not.

Q. They had other dealing with your mother? A. Yes, sir.

89 Q. On behalf of you children? A. Yes, sir, I suppose she was the guardian.

Q. Did you ever sign any other paper, or papers, in reference to the assistance of Mrs. Ann Dill, your grandmother? A. No, only that one time, but then we went on Lexington street before an attorney, and I was there only about two minutes, for I was on my dinner hour, and so I was almost the last one to come.

Q. Were the paper, or papers, you signed read or explained to you? A. No, nothing at all, because I was not there long enough for that. I was on my dinner hour.

Q. How long after the visit of one of these gentlemen to your house was this visit to the office on Lexington street? A. I don't remember.

Q. Was it before or after your father died you went to Lexington street? A. I don't think my father was living at the time.

Q. Are you sure about that? A. Yes, as far as I can remember.

Q. You cannot fix the date? A. I cannot.

Q. It might have been before your father died? A. I cannot say, but I don't think my father was living.

Q. Did you ever employ, directly or indirectly, Mr. Adriaans or Mr. Lewis, or both of them, to represent you in proceedings
90 relative to the Peter Dill estate? A. No, sir.

Q. Did you ever enter into any such contract to employ them, or either of them, as I have described? A. No, sir.

Q. Did you ever have any such contract or agency explained to you by Mr. Adriaans or by Mr. Lewis, or by anybody? A. No, sir, no one whatever.

Q. Did you ever agree to convey your interest in the property that would come to you under the will of Peter Dill, deceased, to secure the payment of any fee to Mr. Adriaans and Mr. Lewis, or either of them? A. I did not.

Q. Did you ever have any such paper or deed of trust explained to you? A. I did not.

Q. When was the first knowledge you had of this alleged deed of trust conveying your interest in the property to secure the payment of fees to Mr. Adriaans and Lewis? A. It was about a year and a half ago, it was about two years ago, something like that.

Q. Who first brought the information or knowledge to you? A. Mr. Dumler.

Q. Mr. John H. Dumler? A. Yes, sir.

Q. A member of the Baltimore bar? A. Yes, sir, he was looking it up.

Q. Looking what up? A. Why he was looking it up
91 for another purpose and——

Mr. GIES: I object.

—he came across this deed of trust.

Q. What other purpose? A. Why, there was some personal estate we were getting at that time.

Q. You were getting your share of the estate of Peter Dill at that time, and he was attending to that for you, and in so doing he happened on that alleged deed of trust? A. Yes, sir, he happened on that, and I had my first knowledge of it then.

Q. What action did you take? A. We employed an attorney?

Q. Whom did you employ? A. Why, we employed you.

Q. What year were you born? A. 1883.

By Mr. GIES: Month and day?

A. January 21st.

By Mr. O'DONOGHUE:

Q. So you were fifteen years old in August, 1898? A. Yes, sir.

Q. Did you read this deed of trust over, or was the effect of it explained to you at the time of signing thereof? A. I did not, no, sir.

Q. Did you ever have any correspondence with Mr. John H. Adriaans or Mr. Samuel H. Lewis, or both of them, in reference to—— A. No, sir, none whatever.

Q. Did Mr. Adriaans and Mr. Lewis, or either of them, as a matter of fact, ever render any legal services to you in reference to your interest under the will of Peter Dill, deceased? A. No, sir.

By Mr. GIES: Objected to.

Q. To your knowledge or at your request? A. No, sir.

Q. On becoming twenty-one years of age did you ever ratify, sanction or consent to any alleged contract for the payment of attorneys' fees to Mr. Adriaans and Mr. Lewis, or to either of them.

By Mr. GIES: Objected to as calling for a conclusion of law.

A. No, sir.

Q. Did you take any action or steps whatever in reference to any alleged liability for any alleged deed of trust or contract for the payment of attorneys' fees to either of those gentlemen? A. Not until two years, not until we employed you.

Q. Did you ever have any knowledge of any such contract until two years ago? A. No, sir, not until two years ago. I say two years, but I don't know whether it was two years, or whether it was a year and a half—just cannot recall the time.

Cross-examination.

By Mr. GIES:

Q. You were born January 21, 1883? A. Yes, sir.

93 And you *are* in your sixteenth year? A. Fifteenth.

Q. Yes, but you *are* in your sixteenth year? A. Yes, sir.

Q. You say you were sitting in the dining room of your house at the time this gentleman, either Mr. Adriaans or Mr. Lewis, called at your house? A. Yes, sir, I was.

Q. And your mother and father and the gentleman were in the parlor, you said? A. Yes, sir.

Q. And you were called into the parlor? A. Yes, sir.

Q. You were called in by whom? A. I cannot say now.

Q. By your mother or by your father? A. By neither; it was—I don't know which one of my sisters it was.

Q. Did you ever have any conversation with this gentleman (indicating Mr. Adriaans) or with Mr. Lewis? A. None.

Q. On the occasion of this call at your house, did they say anything in your presence? A. No, sir, not that I can remember.

Q. Was Mr. Strokmeyer there when you were called into the room? A. No, sir.

Q. You are sure of that? A. No, sir; yes, sir.

Q. Your father was living at that time? A. Yes, sir.

94 Q. In the Fall of the year? A. Yes, sir.

Q. In September? A. I don't remember the month, but he died in November.

Q. It was in 1898 that you were called into the parlor, one after another in respect to these papers? A. Yes, sir.

Q. You stated that after that you went to Mr. Strokmeyer's office on Lexington street? A. I suppose so, I never knew his name.

Q. How long after this time when you were called into the parlor was it that you went to this office on Lexington street? A. I could not say.

Q. Was your father present? A. He was not.

Q. Was he living or dead when you went to Lexington street—to this office? A. I don't think he was living.

Q. When you went to Mr. Strokmeyer's office? A. Yes, sir, I don't think he was living.

Q. Was this gentleman (indicating Mr. Adriaans at Mr. Strokmeyer's office? A. He was not.

Q. Then your recollection is that neither your father nor this gentleman were at Mr. Strokmeyer's office? A. No, sir, neither of them.

Q. Who was it that said to you that this signing was for the purpose of getting money for your grandmother? Who was it
95 that told you that? A. It was only a surmise of mine. It was not told to me, it was only a surmise I had from overhearing the conversation about signing the papers.

Q. Whose conversation? A. I cannot remember.

Q. There was no conversation to that effect when you were called into the room to sign. You did not overhear that conversation at that time? A. No, sir.

Q. Was the conversation that you overheard before or after the signing in the parlor? A. I could not say—probably before.

Q. It was either before or after, and you think it was before? A. Yes, sir.

Q. Where was it that you gained the impression that it was to get money for your grandmother? A. I cannot say.

Q. And you say that it was only a surmise, only an impression that you had? A. Yes, sir.

Q. You are sure it was only an impression? A. Yes, only an impression.

Q. Was it your house or at Strokmeyer's office that the conversation took place from which you said you gained the impression that it was to get money for your grandmother? A. You might say we had that impression universally. You see, I was at Mr. Strokmeyer's office only for a minute, only long enough to sign my name on the paper.

96 Q. And you could not recall where the conversation took place? A. I could not.

Q. Where did the paper that you signed at Strokmeyer's office come from? A. I could not say, my mother brought it with her.

Q. Where was your brother, William P. Dill, when you signed the paper in the parlor? A. I don't know at that time.

Q. Do you know where he worked at that time? A. I cannot recall where he was, whether in Washington or in New York.

Q. Do you know the handwriting of your sister, Mrs. Bertha Kearney? A. No, sir.

By Mr. SMITH: No questions, nothing.

Redirect.

By Mr. O'DONOGHUE:

Q. What was your idea of the object of signing the papers?

By Mr. GIES: I object to that.

A. My mother—she told—I cannot really say.

Q. Well, just tell us the general object you had in signing the papers? A. Just as I have told you, we—she—my grandmother was to get some money, and we signed the paper to get the money for her, for my grandmother. I don't know what the object was, but that was what we thought when we signed.

97 Q. When you say "we" you mean your brothers and sisters? A. I suppose so, all of them.

Recross.

By Mr. GIES:

Q. You say that you hardly recall the incident; that you don't remember much about it? A. Yes, sir, hardly recall it.

By Mr. SMITH:

Q. How many papers did you sign altogether? A. Two.

Q. That is all you remember signing? A. Yes, sir.

Q. And you signed the first paper in the presence of your mother and father? A. Yes, sir, I thought so.

Q. And you relied on your mother and father, and—— A. Yes, sir.

Q. And on what your mother and father told you? A. Yes, sir, my mother and father's word was law to me, and what they told me I would do.

By Mr. O'DONOGHUE:

Q. You never had an idea until up to about a year and a half ago

that any papers you signed in reference to the estate of Peter Dill, deceased, were for any purpose but to obtain some money at that time for your grandmother? A. Yes, sir, that was the idea.

By Mr. SMITH:

Q. You swore to this bill of complaint in this suit? A. Yes, sir.

98 Q. Any statements made in this bill of complaint as to misrepresentation are not made on your personal knowledge?

A. I had, I—I don't know.

Q. Any charge of misrepresentation is not based on your knowledge, is it? A. I cannot understand you.

Q. Well, now, you have testified that neither Mr. Adriaans nor Mr. Lewis made any statements to you at all, so if they are charged in this bill with having made statements of misrepresentations, those allegations, those charges of misrepresentations stated in the bill, are not made on your knowledge? A. No, sir, but I don't know what you mean.

Q. Well, you have testified that neither Mr. Adriaans nor Mr. Lewis made any statements to you at all, so if this bill charges them with having made statements of misrepresentations to you, those charges are untrue? A. Yes, sir, I suppose so.

By Mr. O'DONOGHUE:

Q. If Mr. Adriaans and Mr. Lewis, or either of them made any statements in letter to your mother or father, they are the statements, the representations, the misrepresentations charged in the bill? A. Yes, sir.

By Mr. SMITH:

Q. Can you state any statement made by either of these gentlemen? A. I cannot understand what you are trying to bring out.

JOHN H. DILL.

99 Subscribed to before me this 16th day of October, A. D. 1909.

ARTHUR A. ALEXANDER, *Examiner*.

Whereupon J. EDWARD DILL, having been first duly sworn, testified as a witness for the complainants as follows:

By Mr. O'DONOGHUE:

Q. What is your address? A. 721 East 20th street.

Q. Baltimore? A. Yes.

Q. When were you born? A. 30th of June, 18—I cannot remember the year, 18——

Q. Well, how old are you now? A. 24.

Q. Well, what year were you born? A. It would be 18,—18—it would be '85.

Q. You are one of the complainants to this suit? A. I am.

Q. And one of the beneficiaries under the will of Peter Dill, deceased? A. I am.

Q. State what was the first meeting, or interview, you had with either Mr. John H. Adriaans or Samuel H. Lewis, or both of them? A. I have no recollection of it.

Q. Do you remember seeing a gentleman of either of those names at your home? A. No, sir.

Q. Do you remember seeing any man at your home on Aisquith street in reference to signing some papers? A. No, sir.

Q. Do you remember signing any papers? A. No, sir.

Q. How old were you in '98? A. About 10 years, 11 years.

By Mr. GIES:

Q. You were 13, were you not? A. Yes, sir, 13.

By Mr. O'DONOGHUE:

Q. Do you remember any evening there on which all you children signed any paper when a strange gentleman was there? A. I cannot remember.

Q. Do you remember anything that happened after the death of your grandfather, Peter Dill, anything about providing for the widow of Peter Dill? A. No, sir, I have heard the rest of them speak of it, but I cannot remember it myself.

Q. Do you remember signing any papers on Lexington street? A. I remember going to the office.

Q. What office? A. Mr. Strokmeyer's office down there, we were to go down there, and I was working at the time at a drug store, and I went down there in the half an hour, and it didn't take very long there to sign the paper.

Q. What was the object of signing that paper? A. I don't know.

Q. Who had you sign it? A. Why, we went down there with my mother.

Q. Was that shortly after the death of Peter Dill, and—— A. I don't know.

Q. Was it before the death of your father? A. I don't know.

Q. When did your father die? A. In November, but I don't really remember the date; it has been some years ago.

Q. Well, how long ago. A. I don't know.

Q. Well, has it been 10 or 11 years ago? A. Yes, sir.

Q. Did you employ Mr. John H. Adriaans and Mr. Samuel H. Lewis, or either of them, to represent you in a contest of the will of Peter Dill, deceased? A. Not to my knowledge.

Q. You would have known it, if you had done so, would you not? You would remember it? A. Yes.

Q. Did you authorize anyone else to employ them, or either of them? A. No, sir.

Q. Or in reference to any legal proceedings whatever? A. No, sir, I hardly knew my own mind at that time.

Q. Did you ever knowingly convey away your interest in the estate of said Peter Dill, deceased, in the real estate of

Peter Dill, to secure the payment of *an* attorneys' fees to these gentlemen, Mr. Adriaans and Mr. Lewis, or either of them? A. Not to my knowledge.

Q. Did these two gentleman, or either of them, that is, Mr. Adriaans and Mr. Lewis, ever render any legal services to you, with your knowledge or with your consent, in reference to your interest in the estate of Peter Dill deceased? A. No, sir, none whatever.

Q. Did you ever authorize anyone else to employ them for you? A. No, sir.

Q. When did you first learn of the alleged deed of trust that is of record here in the Recorder of Deeds' Office against your interest in the estate of Peter Dill, deceased? A. Well, one time I was—we were talking the matter over, and we thought something should be done; you know, it seems we were not getting any rent, and it seems there was some trouble over the rents, and we thought it would be right to look the matter up, as it didn't seem right to us about the rents, as we were not getting the rent, as there was some trouble about it, and so it was suggested that we should get Mr. Dumler to look it up for us, which I did, and we all hired him as our attorney to look into the matter, which he did, to look into the case, and then he met Mr. Waters, and, of course, and Mr. Waters told him that——

103 By Mr. GIES: I object to anything except of your own knowledge.

Q. Go ahead. A. Well, it was through Mr. Waters rather that Mr. Dumler became acquainted with this supposed lien which was against us, it was through Mr. Waters that Mr. Dumler found out about this here deed of trust, this lien, against our property, and so Mr. Dumler then told us all about it, and Mr. Dumler advised us to take it up immediately, which we did.

Q. How did you take it up? A. I left it entirely in his hands, and we instructed him to go ahead with the case, for you know we thought we had a clear title to the property, and so instructed him to take it up, to go ahead with the case.

Q. And that was the first time you heard about this alleged deed of trust, when Mr. Dumler informed you? A. Yes, sir.

Q. Well, what was done? A. Well, of course, he taken this up, and in fact he got us some money which was in the hands of Mr. Waters——

Q. He got your share of the personal estate? A. Yes, sir, and then he went ahead with the other matter.

Q. What did he do? A. He took it up.

Q. How? A. By coming over here and employing you, by having communication with you.

Q. How recently has it been since your first knowledge
104 of this deed of trust? A. About a year and a half ago.

Q. Since coming of age have you ratified, sanctioned, or consented to any agreement to pay a fee for legal services to Mr. John H. Adriaans and Samuel H. Lewis, or either of them, in reference to any legal services to be rendered you? A. No, none whatever.

Q. Did you have any knowledge of the existence of any such contract or of this deed of trust up to a year and a half ago? A. None whatever.

Cross-examination.

By Mr. SMITH:

Q. This bill of complaint was prepared by your attorneys not on any statements made by you, but from information collected by them? A. Yes, sir, what they collected.

Q. And your only knowledge of any misrepresentations contained in the bill is what they told you, what your attorneys told you? A. Yes, sir.

By Mr. GIES:

Q. You went to Lexington street to sign a paper? A. Yes, sir.

Q. Was your father living or dead at that time? A. I don't know, he was ailing for sometime.

Q. Have you any recollection whether he went to Mr. Strokmeyer's office or not, if he was living at that time? A. I cannot
105 remember, we went to Strokmeyer's office with the children.
and——

Q. Was Mr. Strokmeyer ever at your home? A. Not that I know of.

Q. How many papers did you sign? A. I only remember signing one at Strokmeyer's office.

Q. You do not remember signing any papers at your house? A. None whatever.

Redirect.

By Mr. O'DONOGHUE:

Q. You made a statement to me of all that you remembered about this case before this bill was filed, and—— A. Yes, sir, all that I remembered about the case.

Q. You made a statement to Mr. Dunler, a lawyer, of all the facts and circumstances concerning which you have testified, before this bill was filed, you made a statement to him before this bill was filed? A. Yes, sir.

Recross.

By Mr. SMITH:

Q. You don't mean to make the statement, do you, that any misrepresentation had been made to you, do you? A. No, sir.

J. EDWARD DILL.

Subscribed to before me this 15th day of October, A. D., 1909.

ARTHUR A. ALEXANDER, *Examiner*.

tinued *the* October 2, 1909, at one o'clock P. M., at the office of D. W. O'Donoghue, Esq., Century Bldg., Washington, D. C.

Met, pursuant to agreement and notice, at the office of Daniel W. O'Donoghue, Esq., Century Bldg., Washington, D. C., at 1:00 o'clock P. M., on October 2, 1909, to take testimony on behalf of the complainants.

Present:

Daniel W. O'Donoghue, Esq., Solicitor for Complainants.

E. L. Gies, Esq., Solicitor for the Defendant, John H. Adriaans.

John Lewis Smith, Esq., Solicitor for the Defendant, Samuel H. Lewis.

E. C. Brandenburg, Esq., Solicitor for the defendant, Clarence F. Normont.

The defendant, John H. Adriaans, in person.

And the Examiner, Arthur A. Alexander.

Before any witness was sworn in this cause at this hearing Mr. Clarence F. Normont and Joseph J. Waters, Esq., both being witnesses in this cause, were conversing together, when Mr. Smith interrupted their conversation by saying:

107 I enter an objection to this conversation between witnesses for after Mr. Normont stated that he had no recollection of certain facts and certain happenings that are alleged to have occurred, that he had no recollection at all as to these facts, Mr. Waters told him and informed him about these alleged facts and circumstances, Mr. Waters being one of the parties that will testify in this suit, and being an attorney at law, and being one of the parties whose conduct in the matter has a good deal to do with the investigation in this suit.

Mr. Smith then asked that Mr. Waters be excluded from the room during the time other witnesses in the cause were testifying, and Mr. Waters then withdrew from the room.

Whereupon CLARENCE F. NORMONT, having been first duly sworn testified as a witness for the complainants as follows:

By Mr. O'DONOGHUE:

Q. Your name? A. Clarence F. Normont.

Q. And your address? A. National Bank of Washington.

Q. And your occupation? A. President of the National Bank of Washington.

Q. Mr. Normont, your name appears as trustee together with that of Charles C. Cole under deed of trust dated August thirtieth, 1898, and recorded the twenty-eighth of September, 1900, in Liber 2512, Folio 429, of the Land Records of the District of Columbia. Do you

108 know anything about that deed of trust given to secure the payment of a fee to Samuel H. Lewis and John H. Adriaans by the beneficiaries under the will of Peter Dill, deceased.

A. I have no recollection of it.

Q. Did you ever consent to being named as a trustee under that deed of trust? Were you ever consulted about it? A. I have no recollection of it.

Q. Well, if you were consulted about that by these parties, or either of them, in reference to becoming a trustee under that deed of trust, you would remember that? A. I have no recollection about that.

Q. Would you remember it, if you had been consulted about becoming a trustee under that deed of trust? A. If I should not remember about this it is because it has been a good many years ago, and then, you know, very many times I am named as a trustee when I know nothing about it, about my being named as trustee in deeds of trust. I am a man of a great many affairs, and in many instances I am named as a trustee without my approval, and this has been a good many years ago.

Q. When did you first remember having this matter called to your attention? A. Not until sometime when that was brought—well, I was subpoenaed, I suppose, or suit was brought against me, was it not, and then I turned it over to Mr. Brandenburg.

Q. By whom was the suit filed, do you recall? A. No, I don't. I don't recall that; I only know that Mr. Adriaans' name appeared on it.

Q. What did you do when you first had your attention called to that, that you were named as one of the trustees under this
109 deed of trust? A. Well, I did just as Judge Cole did; I renounced the trust, I believe, didn't I.

Q. You executed a renunciation of the deed of trust? A. Yes, that was what it was, I suppose.

Q. And you had this renunciation of that deed of trust recorded in the Land Records of this city, you had the renunciation recorded in the Land Records of the District of Columbia? A. Yes, sir, I did.

Q. And it was recorded on October 31, 1900, in Liber 2537, Folio 86 of the Land Records of the District of Columbia, was it not?

By Mr. SMITH: I don't think there is any controversy over that, about the fact of this renunciation.

By Mr. O'DONOGHUE:

Q. Go ahead, and answer. A. Yes, sir, I suppose it was.

By Mr. SMITH: I don't think there is any serious dispute about this matter, and I have no objection to this matter going into the record simply on Mr. Brandenburg's statement. Let him make a statement, that would be the simplest way, to let Mr. Brandenburg make a statement about the facts about this renunciation of the trust. I do not think there would be any objection as to that.

By Mr. O'DONOGHUE: I think we might as well proceed with Mr. Norment's testimony, in the regular way.

By Mr. SMITH: Well, if you are going to proceed in the regular way—as I said, I have no objection to this matter going in on Mr.
110 Brandenburg's statement, but, if you are going to proceed in the regular way, I suggest that you offer the renunciation in evidence, for it speaks for itself.

By Mr. O'DONOGHUE:

Q. Answer my question. A. What was it?

Q. Did you have this renunciation of the deed of trust on such a date as I have described recorded in the Recorder of Deeds' Office?

A. I did.

Q. Have you ever accepted the trust under that deed of trust in any way or manner? A. Not that I know of.

Cross-examination.

By Mr. SMITH:

Q. Mr. Norment, I am informed by Mr. Lewis, who was then a tenant of your building, that he spoke to you about this matter before or after, either before or after, you were named as trustee under this deed of trust, and that you stated to him, that if Judge Cole would serve, you would serve, is that right? A. Well, now, I—well, the last thing might be possible, but I have no recollection of it, I might have said that, but I am a man of so many affairs, I am engaged in so many affairs, and I am named in so many deeds of trust, and a great many times without my knowing about it, and so it is utterly impossible for me to know or remember all about this deed of trust, I don't recall about that, but I might have said it.

Q. You had no interest at all in this matter? A. No, sir, not to my knowledge.

Q. That is all.

111 Redirect.

By Mr. O'DONOGHUE:

Q. Did Judge Cole ever accept the trust under this deed of trust, do you know? A. I have——

By Mr. SMITH: I object to——

By Mr. GIES: I object.

By Mr. SMITH: I object to this witness testifying as to what Judge Cole did.

By Mr. O'DONOGHUE:

Q. You say? A. That I have no recollection about that.

CLARENCE F. NORMENT.

Subscribed to before me this 14th day of October, A. D., 1909.

ARTHUR A. ALEXANDER, *Examiner*.

(Mr. Brandenburg left the hearing at the close of Mr. Norment's testimony).

Whereupon, WILLIAM P. DILL, having been first duly sworn, testified as follows as a witness for the complainants.

By Mr. O'DONOGHUE:

Q. Your name? A. William P. Dill.

Q. What is your residence? A. 58 East 130th street, New York City.

Q. When were you born? A. I was born on the third of December, 1873.

Q. You are the son of Annie L. Dill, and the grandson of Ann Dill and Peter Dill? Your father was the adopted son——

112 A. Yes, sir.

Q. Of Peter Dill? A. Yes, sir, of Peter Dill, yes sir.

Q. When did Peter Dill die? A. He died in the Fall of—let me see—in '97, I think, yes, I think in '97.

Q. When did his widow, Ann Dill, die? A. She died in nineteen hundred and—let me see—she now—in nineteen hundred and six, I think,—let me see—something like that, I don't just remember.

Q. How long ago, did she die? A. To my knowledge—now let me see—about four years ago. I suppose four or five years ago.

Q. How old was she when she died? A. 87 years old, 86 or 87 years old.

Q. When did you first meet either Mr.—first of all, do you recognize the gentleman here (indicating Mr. Adriaans) sitting beside Mr. Gies? That gentleman there? A. This gentleman (indicating): I have not seen him before to my knowledge.

Q. When did you first meet a gentleman who represented himself as Mr. Adriaans? Do you recognize him as Mr. Adriaans? (Indicating). A. This gentleman (indicating)?

Q. No, this one (indicating Mr. Adriaans)? A. No, yes, I can see a faint resemblance now, but he had a beard then. Did he wear a——

Q. Not that gentleman, the other one. A. I thought you
113 meant this gentleman. You mean this gentleman (indicating Mr. Adriaans)?

Q. Yes, at first you referred to Mr. Gies, now, do you recognize this gentleman (indicating Mr. Adriaans)? A. Now I see by his voice, by his talk, he is Mr. Adriaans.

Q. When did you first meet Mr. Adriaans? A. I first meet Mr. Adriaans at the home of my grandmother.

Q. In what year? A. I think it was in the Spring of 1898.

Q. After your grandfather died? A. Yes, sir.

Q. Shortly after your grandfather died? A. Yes, shortly after my grandfather died.

Q. Well, how did you come to meet Mr. Adriaans, what were you doing when you met Mr. Adriaans? A. Well, it was this way, you see, I had a practice of calling to see my grandmother every now and then, on Sundays, I used to go to see her every once and a while, I had a practice of calling on her every once and a while, and on this Sunday I went over to see her, and I went to call on her, and we were there at the house, and then we went out and then we took

a trolley ride up to Cabin John Bridge, and we rode up there and back, and then we come back, and after we got back we had a bite to eat, and then this Mr. Adriaans came in, and my grandmother, she introduced me to Mr. Adriaans, and that was the first time I ever met Mr. Adriaans.

Q. Were you there, were you over there to see your grandmother, over there just paying a social visit to your grandmother?
114 A. Yes, sir, just a social visit.

Q. What took place on that evening there at your grandmother's home between your grandmother and Mr. Adriaans with you present? A. Well, they were talking together, and she said that this gentleman was going to get her some money, they were talking together, and my grandmother said that she did not have a five cent piece, and that she needed some money, and that this gentleman was going to get her some, and they were talking that the estate was all tied up at this time, and he was to get her the money, to get her some money, and so, of course, I didn't know anything about the case, and that is all I knew that she was, that she did not have anything, that that she was in bad straights for money, and we didn't have any money, and I just simply listened to what Mr. Adriaans had to say and he telling my grandmother that he was going to get some money for her. That is about all the conversation, about all I knew about it.

By Mr. GIES: Repeat the last question, please to which that was an answer.

By the EXAMINER: What took place on that evening there at your grandmother's home between you- grandmother and Mr. Adriaans, with you present?

By Mr. SMITH: All this conversation was in the presence of your—in the presence of the three of you. A. Yes, sir.

By Mr. O'DONOGHUE:

Q. Did Mr. Adriaans say anything to you about any interest that you might have in the estate, in the estate of Peter Dill, did
115 he say anything about your interest? A. Not that I might have, not that I remember, no, sir.

Q. When did you next see Mr. Adriaans or Mr. Lewis? A. Well, I met Mr. Adriaans the next time, but I don't remember Mr. Lewis, and I don't know that I would know the gentleman if I saw him, but I know that Mr. Adriaans called at my place of employment in Baltimore, where I was working at the time, and I was working at the Monumental Label Company, and——

By Mr. SMITH: Did he ever see Mr. Lewis? He said he did not know him, and this is the first mention of Mr. Lewis in the testimony of this witness, nothing has been said about Mr. Lewis before, and I want you to fix it by your question, for as it is it leaves it a little indefinite.

By Mr. O'DONOGHUE: No, I don't think so. Please repeat the last question and answer.

(The last question and answer were read by the Examiner).

Q. Did you ever meet Mr. Samuel H. Lewis? A. Not to my knowledge. I don't know the gentleman. I don't know that I know the man.

Q. Had you any communication, direct or indirectly with Mr. Adriaans and Mr. Lewis, or either of them, any communication orally or in writing, with them, during the time from the first time you met Mr. Adriaans at your grandmother's home in Washington and the second meeting with either of them at your place of work in Baltimore? A. No, sir, I never had any communication with them. I never saw him until that next time.

116 Q. That was this time that Mr. Adriaans called at the place where you were working? A. Yes, sir.

Q. What time was it he called there? A. It was just about dark, well, about eight o'clock.

Q. What time of the year was it. A. Late in the summer time.

Q. Of what year? A. Of 1908, I think.

Q. You mean 1898? A. Yes, 1898.

Q. Was your father living then? A. Yes, my father was living.

Q. When did your father die? A. He died, now, he died the next year in the fall of the next year, I think.

Q. What year did your father die. A. Let me see, now, my father died in 1898, yes, 1898.

Q. So then he died the same fall of the year Mr. Adriaans or Mr. Lewis called to see you at your place of employment? A. Yes, sir, this must be about the summer and in the fall he died.

Q. Was this visit of Mr. Adriaans to your place of work—did it occur late in the summer of 1898, just half a month prior to the time they—— A. Yes, I remember, I——

Q. What took place at this visit that Mr. Adriaans paid you at your place of work? A. Well, it was a custom in our place
117 where I worked that no one could come in to see any of the employees, and so when Mr. Adriaans came there he had quite a time to get me down to the office, but I got down at last and,——

Q. You were quite busy at the time he called? A. Yes, sir, and you see when you are working with these inks like we were working at that time, why the ink dries so fast. if you are away, and so at first I could not get away to see Mr. Adriaans, for you see those inks dry that way, and after a while the boss let me down in the office, and the boss was standing outside the door, and I could see him anxious for me to get back to my work, and so Mr. Adriaans showed me the papers, and he had been to my home, and I usually get home about six o'clock or a little after, and I suppose this time I did not come home, and so I suppose they sent him down there to see me, to my place of employment, and after Mr. Adriaans showed me the papers, I saw my brothers' and sisters' names on there, and of course I had no time to read it, to read anything, but I just saw my brothers' and sisters' names on this paper that Mr. Adriaans had with him, and I had not time to read it, and I was anxious to get back to my work, for, you see, any way I had a little trouble in getting down to

the office, and so I was led to believe from the statement that Mr. Waters thought my grandmother was to get some relief, to get some money, for she had no money at that time, and she needed some money, and none of us had nothing to give her, and she had nothing, and from these statements——

By Mr. GIES: I object. That is not in answer to the question.

118 By Mr. O'DONOGHUE:

Q. Go ahead. A. Well, he asked me what took place, and I was answering that, you see, I——

By Mr. SMITH: I think there will be some question as to who made these statements.

By Mr. O'DONOGHUE:

Q. Who made these statements to you? A. Why Mr. Adriaans.

Q. Proceed with what Mr. Adriaans told you, what he stated to you? A. I understood from him that we were to relieve our grandmother, and I looked at the papers, and saw my brothers' and sisters' names on there, and——

(Here John H. Dumler, Esq., entered and remained in the room.)

so I saw my brothers' and sisters' names on these papers, and so their names were on there, and Mr. Adriaans told me it was the request of my father that I sign the papers, that he had been to the house and seen my mother and father and brothers and sisters, that he had been there to see them, that they signed, and that it was the request of my father that I sign the paper, and I hadn't time to read it over and I had my job to look after, and——

Q. How much did you get there? A. Nine dollars a week, and I had my work to look after, and I, well, he just passed the paper over and I signed the papers, and I at that time, why I——

Q. What did Mr. Adriaans state to you to be the object or
119 reason for signing these papers? A. To relieve my grandmother, to try to get her some money, and I didn't know how he was going to go about it, or anything else, but my grandmother told me about that, that she was going to get some money to relieve her.

Q. Now did Mr. Adriaans—was there any other man present at that interview? A. At the shop?

Q. Yes. A. There was another man there, but I don't know who it was. I would not know him if I should fall over him.

Q. Did he say anything? A. I don't remember him saying a word.

Q. Do you know whether he was a notary public? A. I don't know that.

Q. Did you ever go to the office—strike that out—did you ever see Mr. Adriaans or Mr. Lewis, or did they have any interview with you after that you have just spoken of? A. No, sir, not after that.

Q. Did you ever go to the office of a notary public named Strok-

meyer, or to the office of any other notary public by any other name, with your brothers and sisters and execute a deed of trust or any other papers? A. No, sir.

Q. Did you ever sign any other papers except the ones you have just described at Mr. Adriaans' visit to your place of occupation? A. What is that?

Q. Did you ever sign any other papers except the ones you signed on this occasion when Mr. Adriaans called to see you at your place of employment? A. No, sir.

120 Q. At any time, did you sign any other papers? A. No, sir, that was the only papers I signed for him.

Q. Did you sign one or several papers on this occasion? A. Now, that I don't know, for I was so rushed at the time, I might have signed more than one, but I don't remember it, you see, I didn't read them over, I just saw their names there, I saw my brothers' and sisters' names on the papers there and so I signed it.

Q. Did you ever enter into any contract or agreement with Mr. Adriaans or Mr. Lewis, or both of them, for the employment of them or either of them, to represent you and your interest under the will of Peter Dill, deceased?

By Mr. SMITH: I object to that, as an attempt to contradict the terms of a written contract entered into by this witness when he was of lawful age.

A. No, sir.

Q. Did Mr. Adriaans and Mr. Lewis, or either of them, at your instance, at your request, or with your consent, or with your knowledge, perform any services for you as attorneys in regard to your interest under the will of Peter Dill, deceased? A. No, sir, not that I know of.

Q. Did Mr. Adriaans and Mr. Lewis, or either of them, before the time of the signing of these papers by you, state to you that the object of these papers was to employ them as attorneys to represent you and your interest, and to secure their fee, and to give a deed of trust to secure their fee?

121 By Mr. GIES: I object to this and to other leading questions by Mr. O'Donoghue. I have entered this objection before to the leading character of the questions, and I challenge these leading questions and answers.

By Mr. O'DONOGHUE:

Q. Answer the question. A. No, sir, I cannot recall that. No, sir.

Q. How long ago did you first become aware of the existence of this deed of trust upon your interest in the will of Peter Dill, deceased, to secure a fee to Mr. Adriaans and Mr. Lewis? A. I heard this about a year and a half ago, I suppose, about a year and a half.

Q. From whom? A. From my brother.

Q. Which brother? A. My brother Edward, and he told me about it, and I wrote to him and that was right after Mr. Waters had set-

tled that Charles County property. and then right after that was settled, why we found that there was a cloud on the property, and we all got counsel and engaged Mr. Dumlér to look after our interests.

Q. After you first learned of the existence of this deed of trust and of some agreement or contract purporting to be for the payment by you of a fee to Mr. Adriaans and Mr. Lewis, purporting to be secured by said deed of trust, did you ever ratify, said deed of trust of said agreement, or sanction it, or consent to it, in any way? A. No, I never did.

By Mr. SMITH: Objected to as calling for a conclusion of
122 law, and I move to strike the question and answer out.

Q. How long did you remain over with your grandmother, Ann Dill, after the death of her husband, Peter Dill, in the winter of 1897 and 1898? A. I was over with her two months.

Q. Shortly after the death of her husband? A. Yes, sir. I come over here to work, and I lived with her two months.

Q. What was the condition of her health at that time? A. Well, she was a woman that you could not depend on. You could not depend on her from one minute to the other. She was that way, you could not depend upon her. She would get up in the middle of the night, any night at all, she would get up in the middle of the night, and go around the house, and I would hear her up, and so I would get up too, and——

Q. Just tell what was the condition of her mind at that time?

By Mr. SMITH: I object.

By Mr. GIES: I object.

By Mr. SMITH: I object to a statement by this witness as to Mrs. Dill's state of mind, this witness not being an expert and not having stated any facts upon which to express an opinion.

By Mr. GIES: Same objection.

By Mr. O'DONOGHUE:

Q. Strike that out. What was the condition of her health at that time? What was the condition of the health of Mrs. Ann
123 Dill at that time? A. Not any too good, and as I said she was a woman you could not depend upon, for at night she would get up and prowl all around the house, and she had a little lamp that she used to carry around the house at night with her, and she would get up and she would go down stairs, and in prowling around the house she would knock against my door, and I would wake up and then I would hear her prowling around the house, and then I would get up and she would be around the house with this little lantern, and then she had a little safe in the corner, and she would go to this little safe and she would pull out all her papers she kept in this little safe, and she would have them all over the floor, and I would get up and go down and talk to her, and she would have these papers all over the floor, and, of course, I didn't want to scare her, and I would say to her: "What are you doing here up in the middle of the night", and I wanted to quiet her, and I would

say to her: "I am going to leave you if you don't go to bed and keep quiet and go to sleep", and she used to be looking all these papers over and she used to say: "I have got something on my mind. These papers are worrying me, and I cannot sleep, and I want to look after them. I have got something on my mind", she would say, when I would wake up and go down and find her there, and she used to say——

By Mr. GIES: Objected to as being hearsay of the purest character.

A. Well, after I talked with her she would go back to bed, she would go back to bed, and after a little while she would get up again, and she would say there ought to be a police officer around here, that there ought to be a policeman outside of her door,
124 stationed there outside her door all night, and so I would tell her again that if she did not go to bed I would leave her and go home, and then the next night it would be the same thing over again, and things kept on that way, with her getting up at nights, and talking that way, and then my mother came over and relieved me, and I went back to Baltimore.

Q. Did you observe any other peculiarities or actions on her part?

A. No, not that I know of, not outside of that, that she was a woman that you could not depend upon, and——

Q. Well, now what was the condition of her mind at this time as regards being a woman of strong mind and sound judgment, or being of weak mind and easily influenced?

By Mr. SMITH: Objected to on the ground that this witness is not competent, is not a competent witness as to that, and the question is not in proper form to get an opinion of the witness.

By Mr. O'DONOGHUE:

Q. Answer the question. A. Her mind was very weak. You could not depend on her from one minute to the other.

Q. Was she or was she not easily influenced? A. She was easily influenced. Anybody could come in there and talk her out of a thing in a minute, she was as easily influenced as that. You could come in there and talk her out of anything that anybody else had been trying for a week for to get her to do. You could talk her out of a thing in a minute, after anybody else had been talking to her for a week about it.

125 Cross-examination.

By Mr. SMITH:

Q. At the time your grandmother introduced you to Mr Adriaans, you were how old? A. About 24 years old.

Q. And she then told you that he was her attorney? A. She did not tell me.

Q. She told you he was going to get her some money out of her husband's estate? A. She said—she said that he was going to get her some money.

Q. Well, you knew that he was acting for her? A. Well, I suppose he was going to act for her in the matter.

Q. You supposed that he was going to act for her in the matter of getting her some money? A. Yes, sir.

Q. You had that impression? A. Well, the impression I got was that he was going to get her some money.

Q. You knew that there was some question about your grandfather's estate, and about the interests of all of you as heirs in the estate, did you not? A. I knew the will was contested at that time.

Q. And you knew that Mr. Adriaans was a lawyer. A. I was introduced to him as a lawyer.

Q. As a lawyer? A. Yes, sir.

Q. And she told you that he was going to get some money
126 for her? A. Yes, sir.

Q. She told you that? A. Yes, sir.

Q. That is all Mr. Adriaans told you? A. Yes, sir.

Q. That was the only statement made to you about what was to be done? A. That is all I can remember.

Q. You signed these papers voluntarily? A. I signed no papers then.

Q. But they were presented to you in Baltimore, and you signed them voluntarily? A. Yes, sir.

(Mr. Smith at this point left the hearing and did not return.)

By Mr. GIES:

Q. You say that this interview between your grandmother and Mr. Adriaans and yourself took place in 1898, in — A. Yes, sir.

Q. What time? A. In the Spring.

Q. What month? A. That I don't know exactly, for we used to take a run over there every once and a while, and I didn't take any particular notice of what time it was because we went over there so often.

Q. It was in the Spring? A. Well, we went over there so often that I don't know what month it was, but I judge it was in the Spring some time.

127 Q. March, April or May, which? A. Well I know we rode out to Cabin John Bridge, and I suppose it was in—well, I will say May.

Q. Some months before you say Mr. Adriaans called at your place of work in Baltimore? A. Yes, sir, some time.

Q. How long before? A. Let me see now—I will say about seven months.

Q. Seven months? A. Something like that, I don't remember it has been so long ago. I don't know.

Q. You don't know, is that your best answer? A. I answered the best I can. I cannot say whether it was three months or six months or seven months, and I say one of them might be right, and I don't remember just how long it was I saw Mr. Adriaans after that time. Excuse me, for a minute, can I——

Q. Answer the question.

By Mr. O'DONOGHUE: Let him answer.

A. If you will give me a little time, if you will excuse me—it

was—let me see—when I saw Mr. Adriaans after that was, I will say about five or six months after that.

By Mr. GIES:

Q. Now, what, if anything, did Mr. Adriaans say to you in Washington in the presence of your grandmother about getting her some money? What was his exact language? A. His exact language?

Q. Yes. A. Oh, well, oh well, I don't know his exact language, but he—the thing come on me so sudden like, for I
128 was just over there seeing my grandmother, that I don't know exactly what was said to me by Mr. Adriaans, and I didn't pay particular attention to his visit.

Q. Can you remember anything he said to you? A. I remember he told me he was going to get some money for my grandmother, to relieve her, and my grandmother told me he—she showed—my grandmother told me she showed him all the papers.

Q. As a matter of fact, was not your talk about getting this money for your grandmother practically with your grandmother, and not with Mr. Adriaans? A. She did not tell me that; she did not tell me that—

Q. She did not tell you that? A. No, sir, she did not tell me that previous to that.

Q. Now at the factory in Baltimore, or wherever it was that Mr. Adriaans called to see you with another gentleman, you say that you were in a great hurry, you say you were in a great hurry, what conversation took place at the factory or wherever it was you were employed? A. Well, yes I was in a hurry for you to know—

Q. Just state what was said? A. I will tell you the best I can, you see, Mr. Adriaans had been sent down there to see me, I suppose by my father, for me to sign these papers, and he seen me and handed me the papers, and I didn't have time to read them over, but I seen my brothers' and sisters' names there on it, and I signed
it, I signed the papers, and that was all there was said.

129 Q. That was all that was said? A. Yes, to the best of my knowledge.

Q. What did Mr. Strokmeier, or the gentleman that was with Mr. Adriaans, say to you, or what did he say, if anything? A. I don't know it was Mr. Strokmeier.

Q. How long was this gentleman and Mr. Adriaans in the factory? A. Not more than ten or fifteen minutes at the most.

Q. How long were you with them there—how long were you with them there in the office? A. I was—I was there ten or fifteen minutes with them, but I don't know how long they were there, waiting down there to see me before I came down.

Q. But they were ten or fifteen minutes there with you? A. Yes, sir.

Q. And that is all they told you? A. Yes, but I don't remember just what was said, they showed me the signatures of my brothers and sisters, and so I signed.

Q. Between the time of the conversation with Mr. Adriaans in the Spring of 1898 and the time of signing these papers in Balti-

more, you say you had no communication with Mr. Adriaans? A. Not that I know of.

Q. And you had no communication with Mr. Lewis, either written or oral, with either of them? A. Not that I know of.

130 Q. And in the neighborhood of five or six months, or six or seven months, had elapsed between the talk you had with Mr. Adriaans here in Washington and the time he called to see you in Baltimore, is that right? A. Well, I suppose it might have been about that.

Q. And you recall that Mr. Adriaans told you in the factory that your father sent him down there for you to sign, you recall that, do you. A. Well, I didn't come home about six, and so I suppose they thought at home that I was working late, and told him where I was working, and so he came down there and requested me to sign these papers.

Q. Was your father's signature on the papers as a witness. A. That I don't remember.

Q. He was living then? A. Yes.

Q. And lived how long after that? A. Well, he died shortly after that, I guess, he died in November.

Q. Did any one—were you handed the papers to read them over, do you recall? A. He handed me the papers.

Q. And did he ask you to read them? A. He said: "Here are the papers." I suppose he gave me them to read, but I did not have time to read them. I was not there long enough to read them over if I wanted to, and then we had a very poor light there, and so I don't know whether I read them any or not.

Q. But he did not prevent you from reading them? A. 131 No, sir.

Q. And you could have read them if you wished to? A. Yes, sir, except that I didn't have time enough to read them and we had a very poor light there.

Q. Did he tell you what they were? A. No, sir.

Q. Neither one of them told you not to read them? A. No, sir.

Q. Are you sure you did not read them? A. No, sir, I could have read them if I wanted to sacrifice my job, but it would have taken some time to read them, and the boss was there, and it was a rule that no one could see any of the employees there, and I had some little trouble in coming to the office anyway, and I suppose I could have read them if I wanted to sacrifice my job there—it would have taken some time to read them.

Q. But you didn't think it was worth while to get into a dispute with the boss by reading them. A. Well, I didn't want to lose my job, yes, sir.

Q. You wanted to get back to your work? A. Yes, sir.

Q. Is that the only papers you signed? A. Well,—do you mean for Mr. Adriaans?

Q. Yes. A. I never signed any more papers.

Q. You didn't go down to this office to sign some papers, down to this office on Lexington street? A. No, sir.

Q. How many papers did you sign at the office? A. That I don't remember, I signed a paper, I signed some papers there.

132 Q. Well, how many did you sign there? —. Well, that I don't remember, I might have signed one, two, three, but I don't know.

Q. Was the paper you signed there at the factory a printed paper or typewritten? A. To my knowledge, typewritten.

Q. Well, was not the deed of trust a printed paper, didn't you sign that too? A. I might have, but I don't know.

Q. Was not the typewritten paper that you signed an agreement or contract for fees? A. I don't know, for I didn't read it.

Q. But there was more than one paper that you signed there at the factory, as a matter of fact, was there not? A. I might have signed two, but I don't know.

Q. Now, then you didn't sign any other papers, you say, after this time for Mr. Adriaans? A. I don't recall it.

Q. Now, you say you didn't sign any other papers, and you didn't go to this office on Lexington street and sign any papers before Mr. Strokmeyer? A. No, sir.

Q. Do you remember of your brother and sisters going there to this office on Lexington street and signing some papers there before Mr. Strokmeyer? A. I never heard they signed those papers.

Q. Did you sign any papers at your father's house? A. No, sir.

133 Q. Your brothers and sisters signed at the house? A. They must have signed there, for I saw their names before——

Q. Before Mr. Adriaans brought the papers to you? A. Yes, sir, he and another gentleman.

Q. And you don't know who the other gentleman was, are you sure of that? A. Yes, sir, he and another gentleman brought the papers there and I was introduced to him, but I have forgotten his name.

Q. Well, now, your grandmother was never adjudged insane, was she? A. No, sir.

Q. There was never any inquiry into her mental condition? A. By whom?

Q. By the court—by the District authorities? A. Oh, no.

Q. She was never in any asylum, never in St. Elizabeth's Asylum, was she? A. Oh, no.

Q. Or in any other insane asylum? A. No, sir.

Q. And she went down Maryland, down to Harris Lot? A. Always attended to her own business, yes, sir.

Q. At this time didn't she visit around among her many relatives, down in Maryland, and other places? A. Yes, sir, she came to my father's funeral.

Q. And she went down Maryland, down to Harris Lot? A. 134 Yes, she went down there for sometime.

Q. She went to all these places by herself? A. I don't know.

Q. Didn't she go up to Pennsylvania to Edward Dill's house?
A. Yes, she went there with my sister.

Q. You say she went there with your sister? A. Yes, sir, with my sister.

Q. At this time did she have any physician in attendance upon her? A. I don't know.

Q. She was a comparatively well woman, was she not? A. Yes, comparatively a well woman.

Q. And she lived to be 87 years old. A. 87 years old.

Q. And she died when? A. In nineteen hundred and—let me see—I get confused on the year of her death.

Q. As near as you can recall? A. Nineteen hundred and—

Q. Yes? A. 1906, something like that.

Q. Then she lived eight years after this? A. Yes, about that, yes.

Q. That is all.

By Mr. O'DONOGHUE: That is all.

WM. P. DILL.

Subscribed to before me this 16th day of October, A. D.,
135 1909.

ARTHUR A. ALEXANDER, *Examiner*.

Whereupon LEO. A. J. DILL, having been first duly sworn, testified as a witness for the complainants as follows:

By Mr. O'DONOGHUE:

Q. What is your name? A. James Leo Dill.

Q. You sign Leo A. J. Dill; that is the same name? A. Yes, sir.

Q. What is your address? A. 721 East 20th Street.

Q. Baltimore? A. Baltimore.

Q. Baltimore, Maryland? A. Yes, sir.

Q. What is your occupation? A. Clerk.

Q. When were you born? A. 1888.

By Mr. GIES: The month and day?

A. November 4th, 1888.

By Mr. O'DONOGHUE:

Q. You are the grandson of Ann Dill and Peter Dill, and the son of Annie L. Dill? A. Yes, sir.

Q. You are one of the parties complainant to this suit?
136 A. Yes, sir.

Q. Do you remember meeting this gentleman here in this room (indicating Mr. Adriaans) named Mr. John H. Adriaans before? A. No, sir.

Q. Do you remember meeting a gentleman named Mr. Samuel H. Lewis, one of the defendants in this suit? A. No, sir.

Q. Do you remember having any communication, either direct or indirect with either one of these gentlemen, Mr. Adriaans and Mr. Lewis? A. No, sir.

Q. Have you any recollection of having signed any paper, or

papers for either of these gentlemen, or both of these gentlemen?
A. No, sir.

Q. Do you remember signing any papers at your home on an evening when your brothers and sisters signed it? A. I have no recollection of it.

Q. The evening I refer to is apparently a short while before your father's death; have you any recollection of it? A. No, sir.

Q. Have you any recollection of going to a notary public's office on Lexington street in Baltimore while your father was living, or about the time your father died, and signing any paper, or papers?
A. No, sir.

Q. Did you ever authorize, directly or indirectly Mr. Adriaans and Mr. Lewis, or either of them, to appear for you as your
137 attorneys in reference to your interest under the will of Peter Dill, deceased? A. No, sir.

Q. Did they ever render any services to you as attorneys that were reasonable and necessary to preserve your interest in this estate, so far as you know? A. No, sir.

Q. Did you ever enter into any contract, written or oral, or otherwise, to employ these gentlemen, or either of them, as your attorneys in reference to this estate? A. No, sir.

Q. Do you remember executing any such contract, or executing a deed of trust on your interest in said estate to secure any such contract? A. No, sir.

Q. When did you first learn of the existence of this deed of trust that is of record against your interest in the estate that comes to you, on your interest in the estate of Peter Dill? A. About a year and a half ago.

Q. Who first brought it to your attention? A. My brothers and sisters.

Q. Have you ever ratified, sanctioned, or assented to it, to this deed of trust and contract to secure their fee? A. No, sir.

Q. What action did you take as soon as you got knowledge of this deed of trust, in regard to setting it aside? A. See counsel—we saw counsel.

138 Q. Whom? A. Mr. Dumler.

Q. Your mother, Annie L. Dill, has been duly appointed your guardian? A. Yes, sir.

Q. Of your property? A. Yes, sir.

Q. That is all.

By Mr. GIES: No cross examination.

By Mr. O'DONOGHUE: Call in your brother.

By Mr. GIES: If his testimony will be to the same effect as the testimony of this one, we are willing to admit that, to have it go in without him being put on the stand.

By Mr. O'DONOGHUE: That is all right, but we might as well have him testify here.

LEO A. J. DILL.

Subscribed to before me this 16th day of October, A. D., 1909.

ARTHUR A. ALEXANDER, *Examiner*.

Whereupon MAURICE E. DILL, having been first duly sworn, testified as a witness for the complainants as follows:

By Mr. O'DONOGHUE:

Q. What is your residence? A. 721 East 20th street, Baltimore.

Q. What is your name? A. Maurice E. Dill.

Q. When were you born? A. May 12, 1891.

Q. You are one of the complainants in this suit? A. Yes,
139 sir.

Q. You are one of the grandchildren of Ann Dill and Peter Dill, and a son of Annie L. Dill? A. Yes, sir.

Q. And she has been duly appointed guardian of your property? A. Yes, sir.

Q. Have you ever met this gentleman here (indicating Mr. Adriaans) to the right of Mr. Gies here, Mr. John H. Adriaans, have you ever met him before? A. No, sir.

Q. Have you ever met the defendant, Samuel H. Lewis? A. No, sir.

Q. Have you ever had any dealings or business relations with either one of them? A. No, sir.

Q. Have you any recollection of signing any paper, or papers, for either Mr. Adriaans or Mr. Lewis, or both of them? A. No, sir, I have just a slight remembrance of signing on Lexington street, but it is only a slight remembrance of it; I have only a slight remembrance about it.

Q. What do you remember about that? A. Just remember signing my name, but what it was for I don't know.

Q. Do you remember signing any papers at your home? A. No, sir.

Q. Do you remember who was with you when you signed
140 on Lexington street? A. No, sir, I do not.

Q. Do you remember what it was you signed? A. I do not, just know about it from what the others told me.

Q. Since the occurrence? A. Yes, since the occurrence.

Q. You have no independent recollection of your own about it? A. No, sir.

Q. Did you ever employ Mr. Adriaans or Mr. Lewis, or both of them to represent your interest under the estate of Peter Dill, deceased? A. No, sir.

Q. Did you ever enter into any contract or agreement, written or oral or otherwise, with either Mr. Adriaans or Mr. Lewis, or both of them, of this nature? A. No.

Q. Did both of these gentlemen, or either of them, ever represent you or your interest under said estate, and render any legal services for your benefit, or with your knowledge? A. No, sir.

Q. Did you ever knowingly, or with your consent, execute any deed of trust to secure the payment of fees for legal services of both or either of these gentlemen? A. No, sir.

Q. When did you first become aware of the existence of any deed of trust that is of record against your interest in the estate of Peter Dill, deceased, to secure the payment of a fee to these two
141 gentlemen? A. I don't quite understand the question.

(The examiner, at the request of Mr. O'Donoghue read the last question.)

A. About a year and a half ago.

Q. Who brought it to your attention? A. My brother.

Q. Then, what did you do? A. Saw counsel.

Q. Whom? A. Mr. Dumler.

Q. Did you ever consent to, sanction, or in any way ratify this alleged agreement for the payment of fees to these gentlemen, or this deed of trust to secure the same? A. No, sir.

Cross-examination.

By Mr. GIES:

Q. You say you recall having signed a paper on Lexington street?

A. Just a slight remembrance of it.

Q. At whose office was it? A. I don't know.

Q. Was it at Mr. Strokmeyer's office? A. I could not tell you.

Q. Was this gentleman, Mr. Adriaans, there? A. I don't remember.

Q. Do you know what kind of a paper it was you *you* signed? A. I don't know.

Q. Was it before or after the death of your father? A. I
142 don't know that either.

Q. You were born in 1891, is that right? A. 1891.

Q. You say you could not recall whether it was before or after your father's death you signed this paper on Lexington street? A. I have not the least idea.

Q. How old were you then? A. I don't know that—I don't remember.

MAURICE E. DILL.

Subscribed to before me this 16th day of October, A. D., 1909.

ARTHUR A. ALEXANDER, *Examiner*.

Whereupon, JOSEPH J. WATERS, having been first duly sworn, testified as a witness for the complainants as follows:

By Mr. O'DONOGHUE:

Q. Mr. Waters, what is your name? A. Joseph J. Waters.

Q. Address? A. 1222 31st street.

Q. You are a member of the bar of the Supreme Court of the District of Columbia? A. Yes, sir.

Q. And how long have you been a member of the bar? A.
Thirty years or more.

143 Q. Engaged in active practice all this time? A. Yes, sir.

Q. And you are familiar with the probate practice in the District of Columbia? A. Yes, sir, I am.

Q. You are one of the executors of the estate of Peter Dill, deceased? A. Yes, sir.

Q. Who was the grandfather of the complainants in this suit? A. No, he was not.

Q. Well, he was an adopted son, or rather the complainants in this suit are the children of an adopted son of Peter Dill? A. Yes, sir, the children, the complainants in this suit are the children of the adopted son of Peter Dill.

Q. Mr. Oliver P. Johnson was the other executor and trustee under the will of Peter Dill, deceased? A. Yes, sir.

Q. He was a lawyer? A. Yes, sir.

Q. A member of the bar of the Supreme Court of the District of Columbia? A. Yes, I think he was.

Q. Both of you accepted the trusts and executorship under the will? A. Yes, sir.

Q. Did you proceed to have the will probated? A. Yes, sir.

Q. You are familiar with all the proceedings in that case? A. Yes, yes.

144 Q. Are you familiar with the alleged services and acts of Mr. Adriaans and Mr. Lewis in that proceeding? A. Yes, sir.

Q. You have personal knowledge of all of them? A. Yes, I have. that is, I have personal knowledge of all that occurred in my presence, and the others I have knowledge of from the records of the court.

Q. In your opinion, as a lawyer, what value, if any, were the services rendered by Mr. Adriaans and Mr. Lewis to the complainants in this case in so far as their interests were concerned under the will of Peter Dill?

Mr. GIES: I object to the question. The services in question if shown to the court can speak for themselves, and I do not think it is proper to call upon the witness, or any other member of the bar, to express an opinion at this time as to the services rendered. That would be a matter for the court to pass upon.

By Mr. O'DONOGHUE:

Q. Answer the question. A. Yes. I don't think their services were of any value to the estate. I don't think they performed any services of value to the estate or to the complainants, rather their services were a detriment.

Q. Do you think then that the services of these two gentlemen, Mr. Adriaans and Mr. Lewis were of any benefit to the complainants in this case, or——

By Mr. GIES: Same objection as to the last question.

By Mr. O'DONOGHUE:

145 Q. Or were of any value to them? A. I do not think they were of any benefit to them, and anywhere of any value to them.

Q. Were the services rendered by both, or either of these gentlemen, necessary for the protection of the interests of these beneficiaries under the will of Peter Dill, deceased, in your opinion? A. Not at all.

By Mr. GIES: Same objection.

By Mr. O'DONOGHUE:

Q. That is all. Wait—just one more question. You had the will of Peter Dill, deceased, probated and admitted to record?

By Mr. GIES: I object. The records will speak for themselves. I object to that, for the record will speak for itself.

A. In the end we did, yes, we did.

By Mr. O'DONOGHUE:

Q. And you settled up the estate and made final distribution, and—— A. We did.

Q. That is all.

By Mr. GIES: No cross-examination.

JOSEPH J. WATERS.

Subscribed to before me this 18th day of October, A. D. 1909.

ARTHUR A. ALEXANDER, *Examiner*.

Whereupon, JOHN H. DUMLER, having been first duly
146 sworn, testified as a witness for the complainants as follows:

By Mr. O'DONOGHUE:

Q. Your name? A. John H. Dumler.

Q. What is your occupation? A. A member of the bar of Maryland.

Q. Your address? A. My address is Baltimore County, Maryland, is——

(While the witness was giving his home address in Baltimore County, Md., and his office address in the city of Baltimore, the following question was asked:)

By Mr. GIES: Is his testimony only to search the records, I would like to know, because it was agreed that all witnesses should be excluded from the room, and I understood that he was not going to testify in the case?

(After a conversation between Mr. O'Donoghue and Mr. Gies, the latter said that he would not offer any objection to Mr. Dumler testifying in the case.)

By Mr. O'DONOGHUE:

Q. How long have you been a member of the bar of Baltimore city? A. Nine years.

Q. Were you ever engaged to represent the complainants in this suit? A. Yes, I was originally engaged by Edward Dill, J. Edward Dill.

Q. And what did you do? A. In the latter part of 1907, Mr. J. Edward Dill came into my office and secured my services to
147 make an investigation for him in the estate of his grandfather, Peter Dill, and I then came over to Washington and made some investigation and also visited the executor, Mr. Waters,

and in the progress of this investigation I discovered this deed of trust, or this trust, as you call it over here.

Q. What did you come over to attend to in the first instance? A. Well, in the first instance Mr. J. Edward Dill did not seem to understand how he stood, he simply wanted to satisfy himself in reference to his grandfather's will and also as to a settlement of the personal estate.

Q. When did you first learn of the existence of this deed of trust? A. Either in the late part of 1907, or in the early part of 1908.

Q. And did you carry this information of the existence of this deed of trust back to the complainants in this case? A. Yes, I sent for Mr. Dill, and informed him of this deed of trust and when I was over here I also secured a certified copy of this deed of trust, which I handed to him.

Q. That was the first knowledge they had of this deed of trust, was it?

By Mr. GIES: The question is objected to.

A. When I informed them of the existence of this deed of trust and handed them the certified copy of this deed of trust they were very much surprised indeed to know it had been recorded, and that they had ever executed any such paper. They were taken very much by surprise to know about it.

148 By Mr. GIES: Question and answer objected to.

By Mr. O'DONOGHUE:

Q. What action did you take then? A. I advised them to secure legal services here in Washington, and recommended them to you, Mr. O'Donoghue.

Q. And then what occurred after that? A. They secured your services, and in fact I communicated with you for them, and I then sent you the necessary papers, and after several months, I think, I received word from you that you had taken the proper steps to have the papers annulled.

By Mr. GIES: No cross-examination.

JOHN H. DUMLER.

Subscribed to before me this 16th day of October, A. D. 1909.

ARTHUR A. ALEXANDER, *Examiner*.

Whereupon, the hearing or taking of testimony on behalf of the complainants was continued to October 8, 1909, at 2:00 P. M., at the office of D. W. O'Donoghue, Esq., Century Bldg., Washington, D. C.

Met pursuant to agreement and notice at the office of D. W. O'Donoghue, Esq., Century Bldg., Washington, D. C., at 2:00 o'clock P. M., on October 8, 1909, to take testimony on behalf of the complainants:

Present:

149 D. W. O'Donoghue, Esq., Solicitor for the complainants;
John H. Dumler, Esq., Solicitor for the complainants, in
the State of Maryland;
John Lewis Smith, Esq., Solicitor for the defendant, Samuel H.
Lewis;
E. L. Gies, Esq., Solicitor for the defendant, John H. Adriaans;
F. W. Brandenburg, Esq., Solicitor for the defendant, Clarence
F. Norment;
The Defendant, John H. Adriaans, in person;
And the examiner, Arthur A. Alexander.

Mr. O'Donoghue requested that counsel waive the signatures of the witnesses to the testimony, owing to the fact that nine of the witnesses are non-residents; to which Mr. Smith and Mr. Brandenburg consented, and to which Mr. Gies refused to agree.

Whereupon, WILLIAM C. TAYLOR, having been first duly sworn, testified as follows as a witness for the complainants:

By Mr. O'DONOGHUE:

Q. Mr. Taylor, your name? A. William C. Taylor.

Q. What position do you hold? A. Deputy Register of Wills.

Q. Of the Supreme Court of the District of Columbia, holding a Probate Term? A. Yes, sir.

150 Q. I hand you this jacket of papers (handing witness a jacket of papers), and ask you to state what they are? A. They are papers filed in the estate of Peter Dill, deceased, in No. 8225.

Q. Administration cause No. 8225? A. Yes, sir.

Q. In the Supreme Court of the District of Columbia, holding a probate Term? A. Yes, sir.

Q. These papers have come from your office, and are in your official custody? A. Yes, sir.

Q. I offer the record and proceedings in Administration Cause No. 8225, entitled Estate of Peter Dill, deceased, in the Supreme Court of the District of Columbia, holding a Probate Term, in evidence. A. And the original will.

Q. Yes, and I also offer in evidence the original will of said Peter Dill, deceased, which is here presented by Mr. Taylor. Mr. Taylor, I presume you will take these papers back with you to your office, and that they will remain in your official custody, and that they may be presented at the hearing of the case when necessary. A. Yes, sir.

By Mr. GIES: No cross-examination.

W. C. TAYLOR.

Subscribed before me this 12th day of October, A. D. 1909.

ARTHUR A. ALEXANDER, *Examiner*.

By Mr. O'DONOGHUE: I wish to offer in evidence Exhibits
151 A, B, C. and D., to the original bill of complaint filed in this
cause, all of which are certified copies, being respectively the
certified copy of the will of Peter Dill, the certified copy of the deed
of trust involved in this suit, and the certified copy of the renuncia-
tion of Charles C. Cole, and the certified copy of the renunciation of
Clarence F. Norment.

By Mr. GIES: These are copies of the record, are they?

By Mr. O'DONOGHUE: Yes, they are all certified copies of the
records. They are all certified.

Whereupon, J. HENRY STROKMEYER, having been first duly sworn,
testified as follows as a witness for the complainants:

By Mr. O'DONOGHUE:

Q. Mr. Strokmeier, what is your full name? A. J. Henry Strok-
meyer.

Q. Your address? A. Business address?

Q. Yes. A. 622 Equitable Building, Baltimore, Md.

Q. What is your occupation? A. Real estate operator.

Q. Are you an attorney at law? A. No, sir.

Q. Have you ever practiced law? A. No, sir.

Q. Have you ever been admitted to the bar of any State or
152 of any jurisdiction in this country? A. No, sir.

Q. Were you a notary public in the Fall and along about—
no, I will put it a little different—Were you a notary public during
the year 1898? A. I was, yes, sir, I was in Baltimore City, yes, sir.

Q. Have you any recollection or knowledge of having taken the
acknowledgments or of having seen the signatures attached to a deed
of trust dated the thirtieth of August, 1898, before you as a notary
public in the city of Baltimore in the State of Maryland, by——

By Mr. GIES: Wait, one minute, I——

By Mr. O'DONOGHUE:

Q. —by Marian A. Dill, John H. Dill, J. Edward Dill, Leo A. J.
Dill, and Maurice E. Dill,——

By Mr. GIES: Repeat the question, please, for I may change my
objection.

(The last question was read by the Examiner.)

By Mr. GIES: Strike out that objection.

By Mr. O'DONOGHUE:

Q. (Continuing:) —which deed of trust is involved in this case?
A. I have no recollection.

Q. Did you ever read over such a paper to the parties mentioned
at——

By Mr. GIES: I object.

By Mr. O'DONOGHUE:

Q. (Continuing:) —at any such time such acknowledgments were taken by you?

153 By Mr. GIES: One minute. I object because the witness has said already that he has no recollection about it.

A. What is the question?

By Mr. O'DONOGHUE: Repeat the question, please.

(The last question was read by the Examiner.)

A. Why, I cannot remember about this particular case. The only thing I can depend upon is if my signature and seal is on the papers, why, the parties appeared before me, but I cannot recall whether I read it over to them or not.

Q. All you can state is that, if your signature and seal appear on the paper in question, then these parties appeared before you, and acknowledged this deed of trust to be their act and deed? A. Yes, sir.

Q. Can you state whether you heard any such paper read over to them, to the parties mentioned, while you were taking their acknowledgment? A. I cannot unless there was some peculiarity about it that would attract my attention, I cannot recall about it.

Q. And you say you have no recollection about this case? A. No, sir.

Q. Do you know any of the parties whom I have mentioned, and whose names purport to be acknowledged before you? A. No, sir, I do not.

Q. And you don't even know them at the present time? A. No, sir.

154 Cross-examination.

By Mr. SMITH:

Q. You cannot say from your recollection whether that paper was read over to them or not, can you? A. No, sir.

By Mr. GIES:

Q. How long have you been a notary public? A. From May, 1896, to May 1900, four years.

Q. Was it your practice to read over papers to parties executing them? A. No, sir.

Q. They could have read them over themselves if they wanted to? A. I assume that they had read them over before they came to me.

Q. Do you keep a record of your notarial acts? A. No, sir, not required to do it.

Q. You say you didn't keep any record? A. We are only required to keep a record of protested notes, and bills of exchange, etc., and the only entry I would keep of this would be the record on my fee book, which I lost in the fire, that was lost then.

Q. And you- notarial records were lost with it, I presume? A. Yes, everything I had in the office.

Q. Do you know William H. Dill, the father of these children? A. William H. Dill?

A. Yes. A. I only know one Mr. Dill, and he is a letter
155 carrier.

Q. Did you ever go to a house on Aisquith street to take an
acknowledgment? A. I cannot remember.

Q. Too far back? A. Yes, sir.

Q. If you saw the original deed of trust with your signature and
seal on it, you would know if you acknowledged it? A. Yes, sir, if
I saw my seal and signature on it, I would know that it was acknowl-
edged before me.

Mr. O'DONOGHUE: I will ask Mr. Gies if he will produce the
original deed of trust and the contract.

By Mr. SMITH: Is there any controversy about this deed of trust
being executed? I don't think there is any controversy about that.
Is it not admitted in our answers that——

By Mr. O'DONOGHUE: I am not admitting anything. But I will
ask counsel if they will produce the original deed of trust alleged
to—I will ask Mr. Smith if——

By Mr. SMITH: Mr. Smith has no papers in this case.

By Mr. O'DONOGHUE: And I will ask if they will produce the con-
tract or agreement purporting to be to secure the payment of fees
for their services.

By Mr. GIES: I will state that I have not the contract——

By Mr. O'DONOGHUE: I will ask them if they will produce the
original deed of trust and the contract purporting to——

By Mr. GIES: I am not able to produce them today, but
156 if I can, I will produce them.

By Mr. GIES:

Q. Have you any recollection of going to a factory to take an
acknowledgment, in a factory where they printed labels? A. No,
sir.

J. HENRY STROKMEYER.

Subscribed before me this 16th day of October, A. D. 1909.

ARTHUR A. ALEXANDER, *Examiner*.

By Mr. O'DONOGHUE: The complainants announce their case as
closed.

157 *Suggestion of Death of Samuel H. Lewis.*

Filed November 10, 1909.

* * * * *

Now come the Complainants through their Attorney, Daniel W.
O'Donoghue, Esquire, and suggest to the Court the death of the
defendant, Samuel H. Lewis, who died on to wit: the 20th day of
October, 1909, testate, leaving a last Will and Testament whereby
his widow Editha C. Lewis is appointed Executrix of his Estate;
Wherefore these complainants pray:

1st. That said Editha C. Lewis, Executrix of the Estate of Samuel H. Lewis, deceased, be made a party defendant herein in lieu of deceased and that a subpoena may issue against said Editha C. Lewis, Executrix of the Estate of Samuel H. Lewis, deceased, commanding her to appear and true answer make to the exigencies of the Bill of Complaint filed herein.

2nd. That such orders for publication and otherwise may be had here or as may be necessary.

3rd. That such other and further relief may be granted as the nature of the case may require and to the Court may seem fit and proper.

WM. P. DILL,
 MARIAN A. DILL,
 JOHN H. DILL,
 LEO A. J. DILL,
 MAURICE E. DILL,
 J. EDWARD DILL,
Complainants.

By DANIEL W. O'DONOGHUE, *Att'y.*

Test:

W. O. PEIRSON.

DANIEL W. O'DONOGHUE,
Attorney for Complainants.

158 CITY OF BALTIMORE,
State of Maryland, ss:

I, J. Edward Dill being on oath duly sworn depose and say that I have read the foregoing paper by me subscribed and know the contents thereof; that the facts therein contained are of my own knowledge true and those stated on information and belief, I believe to be true.

J. EDWARD DILL.

Test:

W. O. PEIRSON.

Subscribed and sworn to before me this 8th day of November, A. D. 1909.

WILLIAM O. PEIRSON,
Notary Public.

[SEAL.]

Answer of Editha C. Lewis.

Filed February 7, 1910.

* * * * *

The answer of Editha C. Lewis, Executrix of the Estate of Samuel H. Lewis, deceased, defendant herein, respectfully represents to the Court as follows:

This defendant avers that she is the duly appointed and qualified Executrix of the Estate of Samuel H. Lewis, deceased, and that said

Samuel H. Lewis died on the — day of October, 1909, testate, leaving a last Will and Testament, appointing this defendant (his widow) sole Executrix of his Estate.

Answering further this defendant says that she has no personal knowledge of the matters and facts alleged in the original Bill of Complaint filed herein, but she is informed and believes and therefore avers and reiterates as though fully set forth herein the matters and facts of defense alleged and appearing in the answer of said Samuel H. Lewis, deceased, heretofore filed herein and having fully answered this defendant prays that she may be hence dismissed with her reasonable costs in this behalf sustained.

EDITHA C. LEWIS,
Executrix of Estate of Samuel H. Lewis, Deceased,
 By JNO. LEWIS SMITH,
Attorney.

JNO. LEWIS SMITH,
*Attorney for Editha C. Lewis, Executrix of
 the Estate of Samuel H. Lewis, Deceased.*

Replication.

Filed February 7, 1910.

* * * * *

The Plaintiffs join issue on the answer of the defendant Editha C. Lewis, Executrix of the Estate of Samuel H. Lewis, deceased, filed herein.

DANIEL W. O'DONOGHUE,
Attorney for Plaintiffs.

160 *Depositions on Behalf of the Defendant John H. Adriaans.*

Filed Apr. 4, 1910.

* * * * *

WASHINGTON, D. C., November 1, 1909—
 3 o'clock p. m.

Met, pursuant to notice to counsel for the defendants herein, copy of which notice is attached hereto, at the office of Edward L. Gies, Esq., Warder Building, N. W., Washington, D. C., for the purpose of taking testimony on behalf of the defendant John H. Adriaans;

Present, Mr. Gies for the defendant Adriaans; Mr. O'Donoghue for the complainants, and Mr. Adriaans in person; whereupon Mr. JOHN H. ADRIAANS, one of the defendants herein was called as a witness in his own behalf, and after being first duly sworn, was examined and testified as follows:

John H. Adriaans.

Direct examination.

By Mr. GIES:

Q. Mr. Adriaans, state your full name? A. John H. Adriaans.

Q. Are you the John H. Adriaans named as one of the defendants in this cause? A. I am.

Q. What is your occupation? A. I am attorney.

Q. Of the Supreme Court of the District of Columbia? A. Yes.

161 Q. How long have you been a member of the bar of the Supreme Court of the District of Columbia? A. Since 1885.

Q. State whether or not you had any connection with the estate of Peter Dill? A. I did.

Q. How did you become identified with that case? A. Mr. Samuel H. Lewis, who had been a classmate of mine in the Columbia Law School, came to see me one day and stated that a Mrs. Dill—her husband had——

Mr. O'DONOGHUE: I object to what Mr. Samuel H. Lewis stated to this witness.

A. —died in Georgetown, and that she wished to have attorneys appointed to represent her in an attack made upon the will of her husband. I went with Mr. Lewis to Mrs. Dill's house in Georgetown and was introduced to her by Mr. Lewis—I had no previous acquaintance with her. While we three were there Mrs. Dill, that is, the wife of Peter Dill, told me—(looking at a paper) I made these notes at the time—that her maiden name was Ann Perry, and that she had married a man by the name of Richard McDonald.

Mr. O'DONOGHUE: Is the witness reading from notes that he made.

A. Yes, sir, notes that I made at the time.

Mr. O'DONOGHUE: I object to this as in no wise binding upon my clients and as having no bearing on their rights.

Mr. GIES: I think it is perfectly proper for the witness to
162 read from his notes as he states they were made by him at the time of the conversation with Mrs. Dill.

A. Yes, this is my memorandum, made by me at the time. I would not be able to testify without these notes and they are based upon statements made to me by Mrs. Ann Dill, and they are to the effect that she was——

Mr. O'DONOGHUE: I object to the witness stating as to the effect of the memorandum.

A. Mrs. Dill—In that conversation she stated—in that conversation she stated that her maiden name was Ann Perry, and that she had married Richard McDonald, and had by him two children, James McDonald and William McDonald, both of whom were then

living. This was in 1898. James McDonald was a volunteer in the U. S. Army and William McDonald then lived in Baltimore, Maryland. After the death of Richard McDonald, her husband, she had married Peter Dill and had no children by him, and that William McDonald changed his name to William Dill, and had by his wife Annie L. Gill, whose maiden name she did not give me, seven children, whose names are as follows: Marion, Morris, John, Leo, William, Bertha Kearney and Edward.

At that same interview she gave me, or we made up a list of names of people, citizens of Georgetown, who could testify as to the soundness of mind of Mr. Dill.

Q. What proceedings had been taken prior to that time to necessitate the taking of testimony? A. She told me that Mr. Dill had left a will——

163 Mr. O'DONOGHUE: It is understood that I object to all of this testimony as to what occurred between this witness and the deceased woman, Mrs. Ann Dill, widow of Peter Dill.

Mr. GIES: Inasmuch as the administrator of the deceased party is not a party to this bill I do not think it comes within the rule and the conversations are admissible, proceed Mr. Adriaans:

A. I made up from her statements a list of people.

Q. Did you answer my question? A. She stated that Mr. Dill had left a will in which Mr. Joseph J. Waters was named as one of the executors, and that a caveat to that will had been interposed by the heirs of Peter Dill, who were totally cut off by this will, and that she wished to procure counsel for the purpose of defeating the caveat and to procure the probate of the will. In that connection she gave me a list of thirty-one witnesses.

Mr. O'DONOGHUE: I would like to ask what is this paper that the witness now has in his hand?

A. A list of people that Mrs. Peter Dill gave me who would testify as to the soundness of mind of her husband at the time he made the will.

Mr. O'DONOGHUE: Did she write it out?

A. I wrote it out. I am not going to read the paper.

Mr. O'DONOGHUE:

164 Q. Is the paper in your hand writing? A. It is.

Mr. O'DONOGHUE: I object to the witness reading the paper or refreshing his recollection from it.

Q. I submit the paper is competent for the purpose of being used by the witness to refresh his recollection, as having been made at the time the witness states the conversation took place.

Mr. O'DONOGHUE: Mr. Gies, will you have these papers in the Court?

Mr. GIES: Yes, we will have them in the court and will file them.

Mr. GIES: The defendant now offers in evidence the paper used by the witness for the purpose of refreshing his recollection; it is

marked "Deft. Ex. J. H. A. No. 1," and the last paper used by the witness as a list of names of witnesses as "Deft. Ex. J. H. A. No. 2."

Mr O'DONOGHUE: I object to the papers being offered in evidence, clearly being inadmissible as self serving declarations and immaterial.

Mr. GIES: The papers were offered in evidence to be filed with the record at the request of counsel, and in order that the court might see the memoranda used by the witness to refresh his memory. I want to put them in the record as part of the evidence in the case.

165 Mr. O'DONOGHUE: I object to the witness on the stand having further papers in his hands now and refreshing his memory from them; the witness should testify as to the facts without all of these papers at his disposal.

Q. What is the paper you now have? A. This is the power of attorney that was signed by Ann Dill at the same time directing Mr. Lewis and myself what to do, but that was filed in the Orphans' Court.

Q. What is the date of that paper? A. It is dated August 30th, 1898, and was signed on the same day in my presence and in the presence of Mr. J. Barton Miller, the notary public, and William L. Weaver?

Q. Where did you get this paper? A. It is attached to a paper that was filed in the Orphans' Court in case #8225, Estate of Peter Dill.

Mr. GIES: I now offer the paper in evidence, and in as much as it is one of the records of the Orphans' Court and will have to be returned to the court I will ask the examiner to copy it into the record. It is marked "Deft. Ex. J. H. A. No. 3."

Mr. O'DONOGHUE: I object to this paper being offered in evidence, in the first place for the reason that the paper apparently has witnesses thereto, and if it has witnesses thereto those witnesses should be called to prove it, and I require strict proof of the paper.

Mr. GIES: I anticipated that objection and at the next session I will have Mr. Miller present to prove his notarial act.

166 Mr. O'DONOGHUE: And I object for the further reason that the paper is one of the Records of the Supreme Court of the District of Columbia, which should be produced in the regular and proper manner.

(The paper is as follows:)

"Know all men by these presents that the undersigned widow and heirs at law of Peter Dill, deceased, late of Washington City, in the District of Columbia, have made, constituted and appointed, and by these presents do make, constitute and appoint Samuel H. Lewis and John H. Adriaans, of Washington, in said District, our true and lawful attorneys for us and in our names, place and stead to take all needful steps and procedure essential to establish the validity of the will of the said Peter Dill, deceased, in the Supreme Court of the District of Columbia, and elsewhere, to secure the pro-

bate thereof and legal distribution of the subject matter of said will to the devisees therein named, and all acts incident to this end, giving and granting to our said attorneys full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as we might or could do if personally present at the doing thereof, with full power of substitution and revocation, hereby ratifying and confirming all that our said attorneys or
 167 their substitutes may or shall lawfully do or cause to be done by virtue hereof.

In testimony whereof we have hereunto set our hands and seals this 30th day of August, A. D., 1908.

(S'g'd)

ANN DILL.

[SEAL.]

LEO DILL.

"

WILLIAM P. DILL.

"

MARION A. DILL.

"

JOHN H. DILL.

"

EDWARD J. DILL.

"

MORRIS DILL.

"

Two witnesses required:

(S'g'd) J. BARTON MILLER.

WILLIAM M. WEAVER.

DISTRICT OF COLUMBIA,

City of Washington, To wit:

I, J. Barton Miller, a Notary Public, in and for the District aforesaid, do hereby certify that Ann Dill, one of the parties to a certain power of attorney bearing date August 30th, 1908, and hereto annexed, personally appeared before me in my district aforesaid, the said Ann Dill being personally well known to me as the person who executed the said power of attorney and then and there acknowledged the same to be her act and deed.

Given under my hand and official seal this 30th day of August, A. D., 1898.

(S'g'd)

J. BARTON MILLER,

[NOTARIAL SEAL.]

Notary Public, D. C.

Q. Proceed, Mr. Adriaans. A. I ought to have finished my statement about that paper by testifying that it was subsequently signed by all of the complainants to this suit.

168 Q. Was that prior to this acknowledgment before Mr. J. Barton Miller or afterwards? A. It was afterwards.

Q. Was it acknowledged before him? A. It was acknowledged before Mr. Miller by Mrs. Ann Dill, and as to the others it was not acknowledged at all; they simply signed it.

Q. In whose presence? A. In my presence.

Q. Go ahead Mr. Adriaans. A. Mrs. Dill also told me at the same time—

Mr. O'DONOGHUE: It is understood that I object to all of this tes-

timony as to a transaction between the witness and a deceased party on the ground already stated, that it was with a party now deceased, and further that no transaction that this witness may have had with Ann Dill is binding upon the complainants in this case, because not present or parties thereto.

Mr. GIES: It appears that they were present, and also signed the paper.

A. Yes, they were all present and did sign this paper in Baltimore.

Mr. O'DONOGHUE: I still object that these parties were not present at the time of the transaction between the parties.

A. At the same interview I learned that suit No. 912 in the Circuit Court of Prince George's County, Maryland, had been filed by the caveators against Joseph J. Waters and other persons
169 claiming under this will, and the land involved in that suit was three hundred and eighty-six acres, and the object of that suit was for the appointment of receivers pending the contest over the will, and I was asked by her to attend to that case.

Mr. O'DONOGHUE: I object to this testimony on the same grounds as heretofore stated. If it is understood that my objection applies, Mr. Gies, to all of this testimony it will not be necessary for me to continue making the objections as the questions are asked.

Mr. GIES: I understand that you object to practically everything.

Mr. O'DONOGHUE: I object to the witness stating what occurred between himself and Ann Dill, as being inadmissible on the ground that Mrs. Ann Dill is dead, and on the further ground that my clients not being present and taking no part in the transaction are not bound thereby.

Mr. GIES: Your objection applies to all of the transaction between the witness and Ann Dill?

Mr. O'DONOGHUE: Yes.

Mr. *Adriaans*: Go ahead, Mr. *Adriaans*.

A. So Mr. Lewis or myself or both went to Marlboro and made a copy of the bill in case No. 912, which I have here if you want that in evidence.

170 Mr. GIES: The paper is now offered in evidence and marked "Def't Ex. J. H. A. No. 4".

Mr. O'DONOGHUE: I object to the paper being offered in evidence for the reason that either the witness or Mr. Lewis made the copy and for the further reason that there is no proof that it is a true copy, nor is it a certified copy, and it is inadmissible on these grounds, aside from the fact that it is not material to the issues in this case.

Mr. GIES: This paper is only offered as a statement as to how the witness became identified with the case and the services performed by him in the proceedings.

A. Mr. Lewis made this copy, and I subsequently went there two or three times and compared it with the original and found it to be a true copy, and then I prepared an answer for Mrs. Dill to sign

and she did sign it and this is a copy of the answer that I filed for her.

Mr. GIES: That is also offered in evidence and marked "Def't Ex. J. H. A. No. 5".

Mr. O'DONOGHUE: I object to the answer for the same reasons as stated in my objections to the bill.

A. And there was also a petition filed by me signed by Mrs. Ann Dill asking leave to intervene in the case and be made a party, which it seems she was not.

171 Mr. O'DONOGHUE: I object to what this witness wishes to state as "seeming".

A. —She was not a party to this proceeding, as the record shows she was not. I filed a petition asking that she be made a party and she signed and swore to it, and this is a true copy of that paper.

Mr. GIES: That is also offered in evidence and is marked "Def't Ex. J. H. A. No. 6".

Mr. O'DONOGHUE: I object to this copy of the alleged petition for the same reason as to the bill just offered.

Q. What is that paper that you now have, Mr. Adriaans? A. This is a paper that was offered in evidence before the other examiner, Mr. Alexander, and is marked as "Adriaans No. 6".

Q. What is it? A. It is a postal card from Mrs. Ann Dill.

Q. Which one? A. The widow of Peter Dill.

Q. And the party who appears as guardian ad litem and known as such in this case? A. No that was another Ann Dill. There were two Ann Dills, one the widow of Peter Dill, and the other the mother of the complainants.

Q. What is that card? A. This is a card addressed to Mr. Samuel H. Lewis Central National Bank Building, Washington,
172 D. C., dated August 31st, 1898. "Mr. Samuel H. Lewis, Dear Sir: My son's address is William H. Dill, #1300 Asquith Street, Baltimore, Maryland. If you send the papers over the children will sign before witnesses *other* there, if it is impossible for you to go just now. Yours truly, Ann Dill".

Mr. GIES: This paper is offered in evidence in connection with the witness's statement, and we will ask that it be marked as an exhibit here. It is marked "Def't. Ex. J. H. A. No. 7".

Mr. O'DONOGHUE: I object to this postal card being offered in evidence for the reason that its authenticity is not proven, and for the further reason it is in no wise binding upon my clients.

Q. What is the paper you now have? A. The paper that was offered before the other examiner, Mr. Alexander, as "Ex. Adriaans No. 4"; the envelope is marked "Ex. Adriaans No. 4" and the letter "Ex. Adriaans No. 3"; the two go together. It is a letter signed by Mrs. Ann Dill, mother of the complainants, dated 1900, 4th month and 2nd day.

Q. To whom was it addressed? A. To Mr. Samuel H. Lewis,

attorney at law, Central National Bank Building, Washington, D. C.

Q. What is it? A. "Mr. Samuel H. Lewis, Dear Sir:—

Mr. GIES: You need not read it; I will offer it in evidence. The letter and envelope are offered in evidence and will ask
173 the examiner to mark them "Deft. Ex. J. H. A. Nos. 8 and 9" respectively.

Mr. O'DONOGHUE: I object to this letter and envelope being offered in evidence for the reason that the same in no wise bind my clients and they are immaterial to the issues involved in the case.

Q. What paper have you now? A. I have now a letter from Judge George C. Merrick dated Upper Marlboro, September 19th, 1898, referring to the Dill case and addressed to me.

Mr. GIES: I offer that paper in evidence and ask that it be marked "Deft. Ex. J. H. A. No. 10".

Mr. O'DONOGHUE: I object to the letter on the ground that it is a communication from a third party to this witness and is in no wise binding upon the complainants to this case, for the further reason that the letter has no relevancy on its face or otherwise to the issues herein involved.

Mr. GIES: Inasmuch as counsel has attempted to have the lien of Adriaans and Lewis set aside, and their contract for services as attorneys annulled, and has gone so far as to attempt to prove that their services to the cause were valueless I think it is perfectly proper, material and competent to prove that the services rendered by the attorneys in the case were of great value to the estate, and I think
174 it is proper that all of these papers are admissible and proper to show whether their employment was regular or irregular, and whether they have a lien on the proceeds of the estate for their services or not.

Q. What paper have you now? A. I have a letter and envelope dated and mailed September 30th, 1898, from James McColgin, Baltimore, Maryland, who was the attorney that represented the caveators, and it related to the Dill contest.

Mr. GIES: That letter and envelope are also offered in evidence and they are marked "Deft. Ex. J. H. A. Nos. 11 and 12", respectively.

Mr. O'DONOGHUE: I object to the letter for the reason that it is not binding on the complainants to this cause and is irrelevant to the issues in the cause.

Q. What have you there now? A. I have another letter from Judge Merrick, dated October 29th, 1898, relating to the Dill case.

Q. Were those letters in reply to communication of your own? A. They were in reply to oral arguments made by me before Judge Merrick in Upper Marlboro.

Mr. GIES: That letter is offered in evidence and marked as "Deft. Ex. J. H. A. No. 13".

Mr. O'DONOGHUE: I object to this letter on the same ground, that

175 it is in no wise binding upon the complainants to this cause,
and is irrelevant to the issues herein involved.

Q. What paper have you now, Mr. Adriaans? A. I have a letter addressed to me by Edward Dill, who was the brother of Peter Dill, and it is dated November 5th, 1898, and it relates to the Dill case.

Mr. GIES: The letter and envelope are offered in evidence and are marked "Deft. Ex. J. H. A. Nos. 14 and 15", respectively.

Mr. O'DONOGHUE: I object to the letter as being irrelevant and immaterial to the issues involved in this cause, and for the further reason that it is no wise binding upon the complainants in this cause.

Q. What have you now? A. I have another letter from the same gentleman, Mr. Edward Dill, dated November 7th, 1898.

Q. Does it relate to the Dill estate? A. Yes, sir.

Mr. GIES: The letter and envelope are offered in evidence and are marked "Deft. Ex. Nos. 16 and 17th", respectively.

Mr. O'DONOGHUE: I object to the letter for the reasons heretofore given; that is, that they are in no wise binding upon the complainants in this case and are irrelevant and immaterial to the issues involved herein.

Q. Were these letters in reply to communication you had addressed to him? A. Some were and some were not.

176 Q. Did you reply to them? A. I did.

Q. What paper have you now? A. This is a receipt for a deed from the clerk of Charles County, dated December——

Q. What deed is that? A. It is the deed of trust.

Q. Which the complainants to this suit desire to have set aside?
A. Yes, sir.

Mr. GIES: This receipt is offered in evidence and marked as "Deft. Ex. J. H. A. No. 18".

Q. Where is that deed of trust now, Mr. Adriaans? A. I don't know where it is.

Q. Are there any further communications from the clerk of the court that you have? A. Yes, sir.

Q. Have you them with you?

Mr. GIES: This letter and envelope are now offered in evidence for the reason that it is immaterial to the issues in this case, and also upon the ground that it is not binding upon the complainants in this case.

A. Here is a letter and envelope.

Mr. GIES: This letter and envelope are now offered in evidence and marked "Deft. Ex. J. H. A. Nos. 19 and 20", respectively.

177 Mr. O'DONOGHUE: I will object to this letter for the reasons that it is immaterial to the issues involved in the case, and for the further reason that it is in no wise binding upon the complainants herein.

Q. Mr. Adriaans, have you searched among your papers and in all places where that deed of trust would be likely to be found? A. I have.

Q. Have you made diligent search? A. I have.

Q. With what success did you meet? A. I have mislaid the deed of trust and also the contract.

Q. My question was only as to the deed of trust just now. A. Both papers seem to be missing.

Q. You have made diligent search, have you not? A. I have

Mr. GIES: This testimony is offered as an explanation for not producing the original deed of trust.

Q. Have you examined the copy of this deed of trust which is filed with the bill? A. Yes, sir.

Q. Is that a true copy? A. It is a true copy, and the contract is incorporated in the bill of equity which I copied from the original contract.

178 Q. Have you made a search for the original contract? A. I have.

Q. In all places where it would likely be found. A. I have.

Q. How recently have you searched for this contract? A. Within the last ten days, but I had previously searched for it, but I know I had both of these papers in November, 1900.

Q. What success did you meet with in your search for the contract? A. I could not find either one of them.

Q. What conclusion did you reach in regard to the contract? A. I think they are lost.

Q. What paper is that you have in your hands there now? A. It is a bill in equity prepared by Mr. Lewis and myself, in Equity suit No. 21,889; I had this contract before me when this bill was drawn, because I copied the contract in the bill.

Q. Is it sworn to? A. Yes, sir.

Q. Is that a correct copy of the contract in that bill? A. Yes, sir, it is a correct copy.

Mr. GIES: In view of the fact that the original is lost and this purports to be a correct copy made at the time of filing the
179 bill, I offer that portion of the bill in evidence relating to the contract, and request that it be read into the record.

Mr. O'DONOGHUE: I object to the portion of the bill in question being offered in evidence as proof of the alleged contract on the ground that there is no proof that the original contract is lost, and on the further ground that this is not proper proof of the contents of any such alleged contract if the original were proved to be lost.

(The section of the bill which counsel direct to be copied into the record is as follows:)

"This contract by and between the widow and heirs at law of the late Peter Dill, of Georgetown, D. C., parties of the first part, and Samuel H. Lewis and John H. Adriaans, attorneys of Washington, D. C., parties of the second part; Witnesseth, that Whereas the parties of the first part are distributees and devisees under the will of

the said Peter Dill; and whereas said will is now being contested by other kin of said decedent:

It is Therefore hereby Agreed by the parties hereto that if the said parties of the second part by their professional skill shall succeed in defeating the caveat to said will, and secure the probate thereof in the Supreme Court of the District of Columbia, and procure sale of the subject matter of of said will and distribution of the proceeds thereof, among the parties of the first part; that then the parties of the first part do hereby agree to compensate
 180 the parties of the second part twenty (20) per centum of the value of said estate to be determined by the sale thereof, and otherwise. In token whereof we have hereunto set our hands and seals this 30th day of August, 1898.

ANN DILL,
 WILLIAM P. DILL,
 MARIAN A. DILL,
 JOHN H. DILL,
 EDWARD J. DILL,
 LEO DILL,
 MAURICE DILL,

Parties of the First Part:

SAMUEL H. LEWIS,
 JOHN H. ADRIAANS,
Parties of the Second Part."

Witnesses as to Ann Dill:

WILLIAM M. WEAVER.
 J. BARTON MILLER.

Mr. GIES:

Q. Mr. Adriaans, what paper have you there now? A. I have now a post card that was written to Mr. Lewis, dated April 24th, 1900, by the nephew of Mrs. Dill.

Q. What is his name? A. J. R. Perry.

Q. Has that been identified before? A. No.

Mr. GIES: It is offered in evidence and marked "Deft. Ex. J. H. A. No. 21."

Mr. O'DONOGHUE: I object to the postal card as being immaterial to the issues involved in this case and for the further reason that it is no wise binding upon the complainants in this case.

Q. What paper have you now? A. I have now a letter and envelope which was identified before the other examiner, Mr.
 181 Alexander, and which was marked by him as "Exhibit A. Nos. 7 and 8" respectively, the envelope being marked 8 and the letter 7; the letter is addressed to Mr. Samuel H. Lewis.

Q. By whom? A. And signed by Mrs. Ann Dill, Harris' Lot, Charles County, Maryland.

Q. Is that with reference to the Dill estate? A. Yes, sir; it is dated April 26th, 1900.

Mr. GIES: This letter and envelope are offered in evidence and marked "Deft. Ex. J. H. A. Nos. 22 and 23," respectively.

Mr. O'DONOGHUE: I object to the said letter and envelope for the reason that it is immaterial to the issues involved in this case and not binding on the complainants, and is a transaction with a deceased person.

Q. What papers have you now? A. I have a postal card that was designated by the other examiner, Mr. Alexander, as "Exhibit A No. 5," and signed by Mrs. Ann Dill in Baltimore, dated the 20th of May, 1900, and addressed to Mr. Samuel H. Lewis.

Mr. GIES: That is offered in evidence and marked "Deft. Ex. J. H. A. No. 24."

Mr. O'DONOGHUE: I object to this card being offered in evidence for the reasons I have just given, that is, that it is immaterial
182 to the issues involved in this case, and not binding on the complainants and is a transaction with a dead person.

Q. What are the papers you now have? A. A letter written by Mrs. Annie L. Dill of Baltimore to Mr. Samuel H. Lewis; it was designated by the other examiner as "Adriaans No. 2," dated Baltimore, June 1st, 1900, and with this letter there was an enclosure of a paper that was designated by the other examiner as "Exhibit A. No. 1."

Q. What is that paper? A. It is a power of attorney signed by Mrs. Annie L. Dill as guardian ad litem, directing Messrs. Lewis and Adriaans to represent her in the further contest of the will of Peter Dill, deceased.

Mr. GIES: These two papers are now offered in evidence and marked "Deft. Ex. J. H. A. Nos. 25 and 26," respectively.

Ex. 25 is copied into the — & composes the two following pages:

183 "Know all men by these presents that I Annie L. Dill, as guardian ad litem for the infant heirs of Peter Dill, and also individually, of Baltimore, in the State of Maryland, have made, constituted and appointed, and by these presents do make, constitute and appoint Samuel H. Lewis and John H. Adriaans, of Washington, D. C., my true and lawful attorneys for me and in my name, place and stead, to defend the will of the said Peter Dill in the contest now pending based thereon, in case No. 8,225 in the Orphan's Court of the District of Columbia, and secure probate of said will by all proper steps in that matter, giving and granting to my said attorneys full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully and to all intents and purposes as I might or could do if personally present at the doing thereof, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorneys or their substitute may or shall lawfully do or cause to be done by virtue thereof.

In Testimony Whereof I have hereunto set my hand and seal this 1st day of June, A. D., 1900.

MRS. ANNIE L. DILL,
(*Guardian ad Litem.*)

Two witnesses required:
THOMAS KEER BRADFORD.
HENRY C. NAILL.

STATE OF MARYLAND,
City of Baltimore, To wit:

184 I, Thomas Kerr Bradford, a notary Public in and for the city and state aforesaid do hereby certify that Mrs. Annie L. Dill, party to a certain power of attorney dated on the 1st day of June, A. D., 1900, and hereto annexed, personally appeared before me in my state and city aforesaid, the said Annie L. Dill being personally well known to me as the person who executed the said power of attorney, and then and there acknowledged the same to be her act and deed.

Given under my hand and official seal this 1st day of June, A. D., 1900.

[NOTARIAL SEAL.] THOMAS KERR BRADFORD,
Notary Public."

(On the Reverse Side.)

"No. 8,225. Administration. (Marked by Alexander, Examiner)
"Exhibit Adriaans No. 1" Estate of Peter Dill.

Annie L. Dill, Guardian ad Litem, to Samuel H. Lewis and John H. Adriaans. Filed June 2nd, 1900. Lewis A. Dent, Register of Wills, D. C."

185 Mr. O'DONOGHUE: I object to the letter that has just been offered in evidence for the reason that it is immaterial to the issues involved in this case and not binding on the complainants; and I object to this alleged power of attorney for the reason that it is not material to the issues involved in this case and not binding upon the complainants, and for the further reason that the same is not proven in proper legal form in accordance with the rules of evidence.

Mr. GIES: This paper was executed before a Notary Public out of the jurisdiction of the District of Columbia, and is one of the exceptions to the rule requiring proof of attesting witnesses.

Q. What paper have you now? A. I hold in my hand two postal cards written by Joseph J. Waters dated June 28th, 1900, one is addressed to Mr. Samuel H. Lewis and the other is addressed to myself and they are both identical in language.

Mr. GIES: These postal cards are offered in evidence in connection with the complainants' statement and are marked "Deft. Ex. J. H. A. Nos. 27 and 28", respectively.

Mr. O'DONOGHUE: I object to these postal cards being offered in

evidence for the reason that they are immaterial to the issues in the case and in no wise binding upon the complainants.

Q. What papers are those you now have in your hands? A.

186 This is a postal card in the handwriting of Mr. Joseph J. Waters, relating to the Dill case, advising me that proceedings were to be taken before the auditor on the 16th of July, 1900. I recognize Mr. Waters' hand writing.

Q. What is the nature of the proceedings before the auditor? A. Libellous statements in the pleadings; Mr. Waters referred to Mr. Lewis and myself in libellous terms, and we replied by referring to Mr. Waters, and both matters were referred by the court to Auditor Payne to make a report and this postal card alluded to that; and then we had a subsequent postal card from the auditor to the effect that he had made his finding and filed it in the court; that was on July 24.

Q. Do you want those offered in evidence? A. Just whatever you say.

Mr. GIES: They are offered in evidence in connection with the witness's statement and marked as "Deft. Ex. J. II. A. Nos. 29 and 30", respectively.

Mr. O'DONOGHUE: I object to these papers just offered in evidence as being immaterial to the issues in the case and in no wise binding upon the complainants in the case.

Q. Have you any other papers? A. No, that is the history of the case.

Q. That is the history of how you became identified with the case? A. Yes, sir, that is how I became identified with the case.

187 Q. How were you to be compensated, Mr. Adriaans? A. At our first interview we discussed that and Mrs. Ann Dill said that she was not in a position to compensate us——

Mr. O'DONOGHUE: I object to the witness relating what Mrs. Ann Dill said.

A. —and that we could not be compensated until the estate was settled up—not until she got some money out of it herself, and she agreed to give us a lien on the real estate——

Mr. O'DONOGHUE: I object to the witness stating what she agreed to do if it was in writing; if it is in writing the writing is the best proof of its contents, and if it is not in writing it is immaterial to the issues in the case and not bonding upon the complainants.

A. —she said that she was in hard straits, financially and that she needed money and could not pay us, and that Mr. Waters refused to take any action looking to the settlement of this estate, and that was the reason why she asked Mr. Lewis and myself to take steps to have this contest decided, so we went to work at once to have issues framed and we made two or three trips to Marlboro on the receivership question.

Q. What contract did you have with regard to the compensation?

A. We made a contract, a copy of which is in this bill in equity; it is a true copy of the contract.

Q. Who signed it? A. Mrs. Ann Dill.

Q. Any one else? A. Then on the next day—I think
188 it was on the next day—I went over to Baltimore and Mrs. Annie L. Dill and the children signed it over there.

Q. Signed this contract? A. Yes, sir, and also the power of attorney, and also the deed in trust; all those papers were signed simultaneously.

Q. Do you mean the power of attorney that was first offered in evidence was signed at the same time the contract was signed? A. Yes, the contract that was signed by all of the parties was contemporaneous with the deed of trust.

Q. The one dated August 30th, 1898? A. Yes, that was contemporaneous with the contract and was signed simultaneously with the contract, and also with the deed in trust to enforce the contract and make the contract a lien upon the real estate.

Q. Will you define exactly what relation the deed of trust, a copy of which is filed with the bill and which the complainants endeavored to repudiate, had with the contract for fees and power of attorney to prosecute the case? A. The deed in trust——

Mr. O'DONOGHUE: I object to the question on the ground that the papers if properly proven will speak for themselves, and the relationship between them will grow out of the papers themselves without the witness stating his ideas.

A. —The deed in trust was given as a security for the performance of the contract.

Q. And were all executed simultaneously? A. Yes, sir.
189 they were all executed together.

Q. Where were they executed? A. The three papers were first executed by Mrs. Ann Dill at her house in Georgetown, in the presence of Mr. Lewis and Mr. J. Barton Miller and myself; and then I carried the papers, I think the next day, to Baltimore and obtained the signature to the same three papers of the complainants in the case.

Q. What, if any, representations were made by you to them in Baltimore, in order to secure their signatures to these papers? A. They seemed to be well aware of the nature of the papers; I met their father and mother and the older ones of the family except William P. Dill—all of the children were there. They were in the parlor and I went over the situation with them and they seemed to know about what the situation was. I had a letter from Mrs. Ann Dill introducing me, which I presented to Mrs. Annie L. Dill, the mother of these children, and we had some half or three quarters of an hour talk over the whole situation, and they realized that there was a contest pending over this will and unless the will was admitted to probate they would not get anything, because they were of no kin at all to Mr. Peter Dill—they were not his heirs—no blood kin—and their interest in the estate depended upon procuring the probate of the will, but they had no money to pay for it—that is, to pay our

fee, and they said they would sign the same papers giving us a fee out of the settlement of the estate.

Q. Out of the proceeds of the estate? A. Yes, sir.

190 Q. At whose request did you go to Baltimore? A. Mrs. Ann Dill's.

Q. What request did she make of them? A. She gave me a paper requesting that they also sign the same papers, and it was not binding except as to her life estate unless they signed the papers.

Q. What was said about the papers being for the purpose of procuring money for Mrs. Ann Dill? A. No, such statement was made. It was stated that Mrs. Ann Dill was in need of money and that it would put her in money if these papers were signed and the will sustained, but that these papers were for the purpose of securing money for Mrs. Ann Dill is absolutely false; no such statement was made.

Q. Was any such statement made to William P. Dill? A. No.

Q. Were these papers read over to the parties? A. Yes, certainly; they were read over there by Mr. William H. Dill, the father of these children, or by me. It has been a period of ten or eleven years and it is difficult for me to remember just what occurred; I didn't charge my mind at the time with these details.

Q. What recollection have you as to whether it was read over to Mr. William P. Dill? A. The papers were handed to him to be read by him.

Q. Was any effort made to conceal the contents of the papers? A. No.

Q. They had full opportunity to examine and read the
191 papers? A. Yes, my recollection is that Mr. William H.

Dill read there papers out in his house and that he signed as a witness before Mrs. Annie L. Dill, and she was also present and signed it and the children signed one after the other.

Q. Is there anything further that you wish to state in regard to the execution and procurement of these papers, Mr. Adriaans? A. I cannot think of anything further.

Q. What steps did you take, or what duties did you perform in pursuance of your employment in connection with the Dill estate, giving the court a history of your work in detail? A. At the same time I made the trip to Baltimore to obtain the signatures of the heirs to the three papers, I also made a visit to Mr. McColgan and told him we were going to take steps to have the issues framed, and I cannot now say what arrangements we made about that, but I took steps to bring the issues to a focus by having the issues framed and they were prepared by me. Then Mr. McColgan died after the issues were framed and before the trial of the issues, and I was prepared to try the issues when Mr. McColgan died, and they had no other attorney—the caveators had no other attorney to represent them, except Mr. D. W. Baker, was for some time connected with it, not on behalf of the caveators but on behalf of a gentleman connected with Mr. McColgan, but Mr. Baker took no steps in the case.

Q. I asked you what you did? A. The failure of the caveators

192 to employ new counsel and the failure of Mr. Baker to enter an appearance for the caveators necessitated a rule on the caveators to employ new counsel, which I obtained from Chief Justice Bingham; that rule was duly published and pending the publication a copy of the rule was served on the caveators to employ new counsel and their failure to do that resulted in an order nisi, and there was a penalty attached, which was that the caveat should be dismissed, and upon proper proof being made of the publication and of the failure of these caveators to employ new counsel Justice Cole dismissed the caveat.

Mr. O'DONOGHUE: I object to the witness testifying as to matters of record; they speak for themselves.

Q. Mr. Waters testified that the services which you performed in connection with this settlement were of no value, and were a positive detriment to the estate, what have you to say in reply to that? A. I haven't any great opinion of Mr. Waters' legal ability; I think the services were a positive benefit to the estate, and I think whatever detriment was done to the estate was not by my services, but by Mr. Waters' services.

Q. Who caused the delay? A. That was caused by the three cornered fight engineered by Mr. Waters. At the outset of the matter I sought the co-operation of Mr. Waters, realizing that we should make a common defense in the face of the enemy, but he resented the idea of Mr. Lewis and myself coming into this case, and from the first he developed the strongest hostility to us personally and using all his endeavors with the people who employed us to
193 get them to undo the employment. In other words, to get them to revoke our employment, so that eventually we had to act independently of them, realizing that whatever I did was for the benefit of these complainants.

Q. After the caveat was dismissed by Justice Cole what did Mr. Waters do in connection with the estate? A. About two years after that he went before Judge Barnard and obtained a decree vacating the decree admitting the will to probate and dismissing the caveat to the will.

Q. What effect would that have? A. It is a legal question whether it would re-instate the caveat.

Q. What did you do after that? A. I was in court every day the case was up; he then had a trial in the Circuit Court before a jury and put the three witnesses to the will on the witness stand, and there was other testimony, and then Justice Barnard instructed the jury to bring in a verdict sustaining the will.

Q. What jury was it that brought in this verdict? A. It was one of those juries condemned by the Court of Appeals in the case of Clark vs. The United States, reported in 19 Appl. cases at page 295. It was one of the juries that was empannelled before the code went into effect that sat in cases after the code went into effect, and the Court of Appeals held that these juries were illegally constituted and that their actions were null and void.

Q. Such being the case the action of Mr. Waters in having your

order dismissed would have what effect on the caveat? A. I
194 might add that the decree obtained by Mr. Waters was dated
January 16th, 1902; that was the date the jury was sworn
and the date of the verdict, and on the 24th of January, 1902, the
Court of Appeals decided the case of Clark vs. the United States
deciding the jury was not properly constituted; our decree was ob-
tained on September 28th, 1900; that is the decree that I obtained.

Q. If the jury that rendered the verdict in January 1902 was
illegally constituted what effect then would Mr. Waters' action in
having your decree dismissed and the caveat vacated, have upon the
estate? A. If any judge had power to set aside our decree of Sep-
tember 28th, 1900, which I deny, that is not a judge of co-ordinate
jurisdiction; I contend that only the Court of Appeals could do that,
but not a court of co-ordinate jurisdiction could set aside a final
decree two years after it was entered, but if it had such power the
subsequent decree that was obtained by Mr. Waters is absolutely
null and void, because it is based upon an illegal verdict from an
illegally constituted jury. I may say in this same connection that
Mr. Waters obtained a vacation of our decree upon the strength of
the case of Obold, reported in 30th Law Reporter, at page 345. And
certainly no judge of co-ordinate jurisdiction had a right to set
aside a final decree without giving the parties an opportunity to be
present; this matter was taken up by Mr. Waters in our absence
from the court and Judge Barnard set the decree aside.

Q. How do you know about this if you were not present? A. Be-
cause we made a motion to vacate the order that Mr. Waters
195 had obtained from Judge Barnard, and then Mr. William A.
Meloy and myself were heard in argument and we referred
to the Obold case, and I can't yet see what the Obold case has to do
with this case.

Mr. O'DONOGHUE: I object to all of this testimony as being imma-
terial and inadmissible and not binding on the complainants in the
case.

A. —The action that we took in this case was sustained by similar
action under similar circumstances in the estate of Ella J. McPherson,
administration No. 10,139, and also by the reported case of Pegg
vs. Warford, 4th Md. 385, and by Merriet vs. Handy, 8th Gill, page
31. Under those cases there was similar action to what we took in
this case.

Mr. O'DONOGHUE: I object to all of this testimony as being imma-
terial and not binding upon the complainants in the case.

A. —In the McPherson case, which was in this court, issues
were framed November 1st—It is Administration case No. 10,139—
the issues were signed November 1st, 1901, and dismissed by order
of the court without any jury on June 2nd, 1902. In the Obold
case, which was cited as the reason for vacating the decree, there
was a sole caveator who died, and he died after issues were framed
and before the trial of the issues, and his next of kin were made
parties; they undertook to dismiss the caveat by an order of the

court and Justice Barnard held that the Register of Wills had no power to dismiss the caveat after issues were framed; then
196 there was a verdict of a jury and decree upon that, and afterwards, the same parties undertook to file a second caveat raising the same issues, and he held they could not make a second caveat and he dismissed that caveat.

Mr. O'DONOGHUE: I object to this testimony as being no statement of fact but an argument of some points of law this witness has in his mind, and not binding upon the complainants in the case.

Q. Did you have the co-operation or the antagonism of the executors in this case? A. Every essential step that Mr. Lewis and I took was met with the open antagonism of Mr. Joseph J. Waters. Mr. Johnson was more lenient with us, though he was a co-trustee with Mr. Waters, and I had several interviews with him, but he did not seem to be the managing executor like Mr. Waters was—he seemed to be playing the second fiddle, so to speak, and although he seemed to appreciate our efforts he didn't have sufficient power in the case to act of his own volition.

Q. What period of time did your employment cover? A. From 1898 I might say up to the present time, as the case isn't finished yet.

Q. How long had your services continued before you obtained the decree? A. We obtained the decree in September, 1900.

Q. What did you do after that? A. I attended court when these issues were up and was before the auditor and we had a question of accounting. Mr. Waters filed a final account and we surcharged it, and we did that in the interest and for the benefit of these
197 complainants; we claimed there was a fictitious account made up.

Q. What compensation have you received for your services in this case? A. None whatever.

Q. Will you explain what your idea was in connection with this deed of trust and the contract for your services; that is, what do you regard your services as being worth, or rather what did you regard as a reasonable compensation, for the services you were engaged to perform? A. Well, we thought that twenty per cent in view of it being a contingent case and the will provided there could be no sale of the property until the youngest child became of age, in view of these things we thought a fee of twenty per cent would be a reasonable fee.

Q. What was the value of the estate? A. That I don't know yet; there were debts against the estate, and part of the property has since been sold for debt.

Q. What did you regard your services as being worth as a matter of cash figures? A. I should say that Mr. Lewis and myself, on the ground of it being a contingent fee, and also having to wait so long, that a fee of \$1,000 apiece would be a very reasonable fee.

Q. Is there anything else that you care to say in connection with

this matter as part of your examination in chief? A. Not that I recall just at this time, Mr. Gies.

198 Mr. O'DONOGHUE: I reserve the right to cross examine the witness at some future session.

The witness will be recalled for cross examination at the next session.

JOHN H. ADRIAANS.

Subscribed and sworn to before me this 31st day of March, A. D., 1910.

C. ELTON JAMES, *Examiner*.

The session was adjourned to November 6th, 1909, at the hour of three o'clock p. m., at Mr. Gies' office in the Warder Building, 9th and F streets, N. W., Washington, D. C.

The session of testimony adjourned to November 6th, 1909, at 3 o'clock, p. m., was, in pursuance of the notice hereto annexed, continued to November 8th, 1909, at 3 o'clock at Mr. Gies' office.

* * * * *

WASHINGTON, D. C., *November 8th*, 1909—

3 o'clock p. m.

Met, pursuant to notice of postponement of session at the office of Mr. Gies, for the purpose of taking further testimony on behalf of the defendant John H. Adriaans;

Present. Mr. O'Donoghue, for the compl'ts; Mr. Gies for the defendant Adriaans, and the defendant Adriaans in person;
199 whereupon Frank D. Lockland, J. Barton Miller, William M. Weaver and the defendant John H. Adriaans were called as witnesses, and after each was duly sworn was examined and testified as follows:

Frank D. Lockland.

Direct examination.

By Mr. GIES:

Q. Mr. Lockland, state your full name? A. Frank D. Lockland.

Q. Where are you employed? A. At the Register of Wills Office.

Q. What are those papers that you have there (indicating papers in a jacket—the record in what case? A. The record in the estate of Peter Dill, Administration No. 8.225.

Q. What are these two papers in particular? A. One is a power of Attorney and the other is the answer of H. G. Hatfield on the motion of Joseph J. Waters.

Q. Are they part of the record of that case? A. They seem to be, as far as I can see, yes, sir.

Q. Can you state positively whether they are or not? A. Yes, sir, they are a part of the record.

Mr. GIES: The papers referred to are the power of attorney, which has heretofore been offered in evidence, bearing date the 30th day of August, 1898, and filed as an exhibit with the answer of A. G. Hatfield in answer to the motion of Joseph J. Waters in the Orphans' Court of the 15th day of June, 1900.

200 The other paper referred to is a paper marked as "Exhibit Adriaans No. 1," by Mr. Alexander the examiner, and by the present examiner as "Deft. Ex. J. H. A. No. 25," is the power of attorney dated the 1st day of June, 1900, from Mrs. Annie L. Dill, guardian ad Litem, and filed in the Orphans' Court on the 2nd day of June, 1900.

Both of these papers have been copied into the record by Mr. James, the examiner, while we have been waiting for you.

Q. Do those papers which I have just referred to and which have been offered in evidence relate to and are they a part of the record of this case, which you have before you? A. They have the same number and file mark and everything; they seem to me to be a part of it.

Q. You are sent here by the Orphans' Court with these papers? A. Yes, sir, they sent me over with the papers.

Mr. GIES: You may step aside for the time being, Mr. Lockland, and if we need you we will recall you.

FRANK D. LOCKLAND.

Subscribed to before me this Fourth day of February A. D. 1909.

C. ELTON JAMES, *Examiner*.

201

J. Barton Miller.

Direct examination.

By Mr. GIES:

Q. Mr. Miller, are you a notary public now? A. No, sir.

Q. Were you a Notary Public on the 30th day of August, 1898?

A. I was.

Q. For the District of Columbia? A. Yes, sir.

Q. I show you a paper being a power of attorney filed in the Orphan's Court on the 15th day of June, 1900, as an exhibit to the answer of A. G. Hatfield on the motion of Joseph J. Waters, and ask you if that is your official signature to that paper? (Witness examines the paper.) A. Yes, sir, it is.

Q. Is this also your signature as a witness here? A. Yes, sir.

Q. Whose acknowledgement did you take upon that occasion?

A. The acknowledgement of Ann Dill.

Q. Do you recall the place where you took this acknowledgement?

A. I do.

Q. Where? A. At her home on Wisconsin Avenue in Georgetown.

Q. On the date mentioned in the acknowledgement? A. Yes.

Q. Do you remember Mr. Weaver here (indicating)? A. Very well.

202 Q. Was he present on that occasion? A. He was.

Q. Did you take the acknowledgement of any other paper on that occasion? A. I took the acknowledgement of two papers on that occasion.

Q. I now hand you a certified copy of the deed of trust dated the 30th day of August, 1898, and filed as an exhibit with the bill of complaint in this cause, and ask you to look at it and after refreshing your memory by an examination of the copy, state whether the original of that paper is the one you also took the acknowledgement of on that date? A. I could not state positively, as I do not see my signature here, but I took her acknowledgement to two papers on that day. I affixed my signature and notarial seal and was paid for two acknowledgements.

Q. Whose acknowledgement did you take to the other paper on that occasion than the power of attorney? A. Mrs. Ann Dill.

Q. You took her acknowledgement to both papers? A. Yes, sir.

Q. Do you know whether Mr. Weaver was present then? A. Mrs. Dill, I recall, went through the house to the back yard and invited Mr. Weaver to come into the house calling him from the yard; I recall the circumstances very plainly.

Q. Were the two papers signed at the same time? A. Yes, sir, while I was there.

203 Cross-examination.

By Mr. O'DONOGHUE:

X Q. Taking the first paper referred to I will ask you whether any one else except Ann Dill signed this power of attorney you have just stated you had her acknowledgement before you and which you signed as a witness on that occasion? A. I don't recall any one else but Ann Dill.

X Q. You don't recall seeing Leo Dill sign the said paper? A. I do not.

X Q. Or William P. Dill sign this paper? A. I don't remember him.

X Q. Or Marian A. Dill sign this power of attorney before you? A. I don't remember her.

X Q. Or John H. Dill sign this power of attorney before you? A. I don't remember him.

X Q. Or Edward J. Dill sign this power of attorney before you? A. I do not.

X Q. Or Morris Dill sign this power of attorney before you on that occasion? A. I don't remember him.

X Q. You would have remembered it if these people signed before you? A. I knew Ann Dill personally; that is, I knew who she was, and I have no recollection of these other people, and the fact that she signed the paper rather impressed it-

204

self upon my mind; I don't recall these other people at all.

X Q. Why did the fact that she signed the paper impress itself

upon your memory? A. Because I recall that I had never been in the house before that time and I have never been in the house since. I recall that when I went there I found Mr. Adriaans there, and when some one suggested that another witness should be present that she went out of the room that we were in and went to the rear of the house and went out on the back porch or in the yard and called to her neighbor, who was Mr. Weaver, to come in and witness the paper; I recall that very well.

X Q. Was there any one else present at that time except Mrs. Ann Dill, Mr. Weaver, Mr. Adriaans and yourself at the time this power of attorney was signed? A. I think there was a man there who came to my office and requested me to come up and certify to the signatures.

X Q. Who was he? A. I don't remember who he was.

X Q. Was it Samuel H. Lewis? A. I cannot say at this time.

X Q. How old was Mrs. Ann Dill when she signed this paper? A. I don't know. She was an elderly lady; I should say that she was—well, I should say that she was 60.

X Q. Didn't she appear to be over 60? A. I don't recall; she may have been over 60, I don't know.

205 X Q. Did you read this paper to her? A. I must have read the paper to her, as I always do read papers to those who are not acquainted with their contents.

X Q. Have you any recollection of reading this paper to Mrs. Dill? A. It is my custom to do so and I don't recall of ever having deviated from that custom.

X Q. I ask you again, do you remember of having read this paper to Mrs. Dill? A. I don't remember, specifically.

X Q. Is it your custom to read papers to people who come to acknowledge papers before you when the attorney is present? A. It is my custom to read the papers verbatim in all cases unless the papers are read to them by others in my presence, or unless the substance of these papers is related to the party who is to sign them and is assented to by him.

X Q. You don't know what took place in this case in regard to the reading of this paper to this woman? A. I don't remember exactly what was done, but I am confident that the woman was made cognizant of the material facts in the paper.

X Q. Yet you don't remember what was done? A. I always do at least that.

X Q. Mr. Miller, have you any idea what the other paper was that you say was signed by Mrs. Ann Dill on the same occasion as this power of attorney was signed? A. Well, I was a little curious at the time which, as I told you, caused the case to be impressed
206 upon my memory; I recall that I read the papers and remember the circumstances in this case very well, while others that have come later have been forgotten.

X Q. What was this paper—this second paper that Mrs. Ann Dill signed before you on that occasion? A. I think it was a deed in trust.

X Q. Why do you think that? A. Well, because I recall that a

law suit was going on or was about to be instituted and that Mr. Adriaans had been retained by certain of the Dill interests, Mrs. Dill among them, to prosecute that case, and that he was to have his fee made secure in the case.

X Q. Who explained this to you? A. I read the papers.

X Q. Did the papers so state? A. So far—the papers at least gave me that impression.

X Q. Do you remember whether this paper was a deed in trust or a deed of trust? A. I am under the impression that it was a deed in trust.

X Q. Where did you get this impression from? A. Well, from what was said at the time.

X Q. Do you remember what was said? A. I read the papers, and the papers, I think, stood for this; that is my recollection now.

X Q. You have just stated that you got your impression of what this paper was from what was said, now I ask you what was said?

A. The papers were read?

207 X Q. Who read them? A. I read them.

X Q. Are you certain about that? A. Yes; I am certain about that.

X Q. Do you remember what those papers were. A. It has been—I should say 10 or 12 years since this occurrence took place, and I am not in a position at this moment to state in express terms just what the papers contained, but that is the impression that I arrived at and which has been retained in my mind.

X Q. Can you by looking at this certified copy swear on your oath that you took the acknowledgement of any such paper as that on that occasion? A. To look at a certified copy of the paper?

X Q. Yes, the certified copy that Mr. Gies has just shown you? A. I cannot swear to my signature—I can't swear that that is the paper.

X Q. Then you can't state whether this deed of trust that Mr. Gies has just shown you was the paper to which you took the acknowledgement on that occasion, being the same occasion on which you took the acknowledgement of the power of attorney? A. No, I can't swear that that is the paper; I believe that is the paper.

X Q. Did any one other than Mrs. Ann Dill acknowledge this second paper that you say was a deed in trust, before you on that occasion? A. I don't recall.

208 X Q. Would not you recall it if they had done so? A. I rather think I would.

X Q. In order to make the matter certain I will ask you if Morris Dill acknowledged this trust deed that is referred to by Mr. Gies, on this occasion? A. I don't remember him.

X Q. Did Mr. William P. Dill acknowledge this deed of trust referred to? A. I don't remember him.

X Q. Did Marian A. Dill acknowledge it? A. I don't remember him.

X Q. Did John H. Dill acknowledge it? A. I don't remember him.

X Q. Did Edward J. Dill acknowledge it before you? A. I don't remember him.

X Q. Did Leo Dill acknowledge it before you? A. I don't remember him.

X Q. You saw none of these several persons sign or acknowledge this deed of trust? A. I don't remember any of them.

X Q. You would have remembered had they done so? A. It is probable I would have done so.

X Q. Do you remember any of the conversation that occurred on that occasion? A. No detailed conversation, no; I just recall that the usual performance was gone through with; I remember that I stated to Mrs. Dill that I was a notary public and had been called

209 there to certify to her signature to certain papers and I told her what the papers were, and I told her that we ought to have another witness, and as I before stated she procured the witness herself.

X Q. Why did you tell her you thought it would be better to have another witness? A. Because it has always been my custom as a notary to get a second witness whenever it is possible to do so.

X Q. Have you followed that custom very often? A. Yes, that custom is a very usual one with me.

X Q. You are no longer a notary public? A. No, sir.

X Q. When you left the house on this occasion did you leave the home of Mrs. Ann Dill before or after Mr. Adriaans left? A. I do not remember.

Mr. GIES: There are no further questions, Mr. Miller.

J. BARTON MILLER.

Subscribed to before me this 4th day of February, A. D. 1910.

C. ELTON JAMES, *Examiner*.

210

William M. Weaver.

Direct examination.

By Mr. GIES:

Q. Mr. Weaver what is your full name? A. William M. Weaver.

Q. Did you know Ann Dill in her lifetime? A. Yes, sir.

Q. Where did she live? A. On Wisconsin Avenue, in Georgetown.

Q. Where did you live at that time? A. I lived at No. 2417 Wisconsin Avenue.

Q. Very near where Mrs. Dill lived, I suppose? A. Yes, sir.

Q. Was it next door to her? A. No, sir.

Q. State what relation the one house had to the other? A. There was one house between ours.

Q. Is this your signature here? (Showing witness a paper). A. Yes, sir.

Q. Do you remember the occasion of your signing that paper? A. Yes, sir.

Q. Was Mr. Barton Miller present? A. Yes, sir?

Q. Who else was present? A. Mrs. Ann Dill and a couple of other men.

Q. Do you remember whether Mr. Adriaans here was present then? A. I think he was.

211 Q. Do you remember Mr. Samuel H. Lewis being there?

A. No, sir.

Q. How did you come to be there? A. I was called in to witness the signatures.

Q. Of whom? A. Mrs. Ann Dill.

Q. How many papers did you sign on that occasion? A. I think there was two, but I can't recall; I think I signed my name twice.

Q. Could you tell by looking at this paper which purports to be your signature whether this is the paper you signed on that occasion or not? A. No, sir.

Q. This is a certified copy of the original paper, which appears to be lost, and from this paper you would not like to say whether you signed the original or not? A. No, sir.

Q. You signed two papers on that occasion, however? A. I think I did.

Mr. GIES: The paper referred to is the deed of trust filed as an exhibit with Mr. O'Donoghue's bill of complaint. The first paper is the power of attorney dated the 30th day of August, 1898.

212 Cross-examination.

By Mr. O'DONOGHUE:

X Q. Did you see any one else sign this paper except Ann Dill on that occasion? A. No, sir.

X Q. Did you see Leo Dill sign that paper? A. No, sir.

X Q. Did you see William P. Dill sign it? A. No, sir.

X Q. Did you see Marian Dill sign that paper? A. No, sir.

X Q. Did you see John H. Dill sign the paper on that occasion? A. No, sir.

X Q. Did you see Morris Dill sign that paper on that occasion? A. No, sir.

X Q. The only one you saw sign this paper was Ann Dill? A. Yes, sir.

X Q. You can't state whether you ever signed your name as a witness to this deed of trust that Mr. Gies has referred to as being a certified copy of the original deed of trust? A. No, sir.

X Q. You don't know whether that is the paper that Ann Dill signed on that occasion or not? A. No, sir.

X Q. It would be impossible for you to testify anything
213 about that? A. Yes, sir.

X Q. Unless the paper itself was before you I presume? A. Yes, sir, and see my signature on it.

Mr. GIES: The original is not here.

X Q. How long had you known Ann Dill? A. All her life, I reckon.

X.Q. How old was she in August, 1898? A. Well, she must have been in the '60's.

X Q. What was the condition of her health then? A. She seemed to be all right then.

X Q. Did you talk with her on this occasion that you signed these papers? A. No, she just called me in and told me she wanted me to witness her signature.

X Q. Who was present on this occasion? A. Mr. Miller; that gentleman is the only one that I can recall.

X Q. And Mrs. Dill? A. Yes, sir.

X Q..And yourself? A. Yes, but there was a couple of other men there; I think it was out in the next room.

X Q. Do you remember whether any papers were read over to Mrs. Ann Dill on this occasion? A. No, sir.

X Q. Do you remember any of the conversation that occurred on this occasion? A. No, sir.

214 X Q. Were the contents of these papers explained to Mrs. Ann Dill on that occasion? A. I didn't hear them explained.

X Q. You didn't hear either one of these papers read to her on that occasion? A. No, sir.

X Q. Did you see her read them herself? A. They had them on the table when I went in.

X Q. I say did you see her read them over? A. No, sir.

X Q. As far as you know she didn't know the contents of these papers at all? A. I didn't know anything about it.

X Q. Did you hear Mr. Adriaans or Mr. Miller or anybody explain the contents of these papers, or read the contents of these papers to Mrs. Ann Dill while you were there? A. No, sir.

Redirect examination.

By Mr. GIES:

Q. You signed as a witness to Mrs. Dill's signature only? A. Yes, sir.

Q. At whose request did you sign? A. Mrs. Ann Dill's.

WILLIAM M. WEAVER,
By C. ELTON JAMES, *Examiner*.

Sgd. by consent of counsel for the parties.

215 Mr. GIES: Mr. O'Donoghue, Mr. Adriaans is now offered for cross examination.

Mr. O'DONOGHUE: The witnesses for the defendant were not excluded from the room while the other witnesses were testifying and they will not now be asked to leave the room while he is testifying.

Mr. GIES: The witness in question being a member of the bar.

Cross-examination.

By Mr. O'DONOGHUE:

X Q. Mr. Adriaans you have testified that you are a member of the bar of the Supreme Court of the District of Columbia, have you

ever been disbarred from membership from the bar of the Supreme Court of the District of Columbia?

(No answer is made.)

Mr. GIES: I object to that question because the witness does not care to answer it and I don't think under the circumstances he is obliged to answer it.

A. I have no objection to answering that question, that I was disbarred, and was restored.

Mr. GIES: I withdraw my objection to the question as the witness has answered. You may strike the objection from the record, Mr. Examiner.

Mr. O'DONOGHUE: No, no leave it there; take down everything that is said.

216 X Q. Are you a member of the Court of Appeals of the District of Columbia? A. I am.

X Q. Have you always been? A. There was a time when I was not.

X Q. Why? A. I was disbarred for libelling Mr. Davis when he was District attorney; it didn't involve my integrity at all.

X Q. Why were you disbarred from the Supreme Court of the District of Columbia? A. On account of a suit that occurred thirteen years before that time, and the Court of Appeals unanimously reversed it and restored me, and you were present at these proceedings and counselled me what to say. You know all about it, you are just trying to inject this into the record in order to make capital for yourself out of it.

X Q. Did you prepare the deed of trust that is involved in this case? A. I have every reason to think that I did so.

X Q. Do you know? A. I would not know positively without seeing the original; if it is in my handwriting I would know, but I would not know positively without seeing, although I have every reason to believe that I did prepare it.

X Q. Do you remember whether you prepared the deed of trust in this case or not? A. As I said before, I probably did prepare it, but I do not know positively whether I did or not and I could not be expected to swear positively to that fact.

217 X Q. So then you have no recollection as to whether you prepared that paper or not? A. I said I prepared whatever papers were prepared on that occasion.

X Q. Was there any such deed of trust prepared in this case? A. There was.

X Q. Did you prepare it? A. I did.

X Q. Why didn't you answer that in the first place. A. I answered to the best of my knowledge at the time.

X Q. Who prepared this contract? A. I did.

X Q. Who prepared the two powers of attorney that are offered in evidence here by your counsel? A. I am not sure about the handwriting; if they are not in my handwriting they were probably dictated by me.

Mr. GIES: Mr. Adriaans, look at the papers and see whether they are in your handwriting. (Witness examines paper-). A. This is in the handwriting of Mr. Lewis.

X Q. What power of attorney is that? A. That is the power of attorney from Annie L. Dill guardian ad litem that was filed June 2nd, 1900; that is not in my handwriting but I recognize the handwriting of Mr. Lewis and my recollection is that I was present when he prepared that deed, but I am not sure about this, but I remember after it was drawn up and signed it was turned over to me and I filed it.

218 X Q. Now, taking the other power of attorney, can you tell us who prepared that? A. The other power of attorney is in my handwriting.

X Q. That is the power of attorney dated—— A. August 30th, 1898; this is attached to the paper that was filed in the Orphans' Court on the 15th day of June, 1900.

X Q. Mr. Adriaans, what has become of the original deed of trust that is involved in this cause? A. I cannot tell you what has become of it; I had this contract before me when I drew the bill in equity, and the contract and the deed were then together, but I have looked all through my papers and I cannot find either one of them, although I do not believe I have lost them. It frequently happens that papers belonging to one jacket get into another jacket, and I have an idea that something of that kind has happened in this case, but I have looked through my papers carefully, knowing that I would be asked about it.

X Q. The deed of trust involved in this case and the contract purporting to be secured by the deed of trust were last in your possession? A. Yes, sir, and I have no doubt they are now in my possession if I could find them; I have got such a stack of papers that I really would not know where to look for them.

X Q. Has any one else had possession of these papers since they were last in your possession as you have stated? A. No, they were lost while in my possession and for all that I know they are still among my papers if I could locate them, but I would not know where to look for them.

219 X Q. Mr. Adriaans, you say that Mrs. Ann Dill employed Samuel H. Lewis and yourself in this case? A. The first knowledge that I had of the case was through Samuel H. Lewis.

X Q. Who was Mr. Samuel H. Lewis? A. He was the son of Lieutenant Governor Lewis of Virginia and a brother of the late John Ambler Smith.

X Q. Was he a member of the bar? A. Yes, sir.

X Q. Had he been engaged in the active practice of the law in this jurisdiction? A. Yes, but he had more of a departmental practice than of the regular court practice, and because he had not had a great deal of active court practice and I had been engaged in the court practice he thought I would be of aid to him in this matter; how he became acquainted with Mrs. Ann Dill I do not know.

X Q. Who rendered the services in this case as the matter pro-

gressed, you or Mr. Lewis? A. We both acted together, I had the active work but consulted from time to time with Mr. Lewis, and I took no steps without the advice and consent of Mr. Lewis, although myself doing the active work in the case.

X Q. Did you investigate this case fully before you had this power of attorney signed? A. I could not investigate it before I had the power of attorney signed because that was the first time I knew anything about the case.

X Q. The first you knew about the case was on the 30th of 220 August, 1898? A. Yes, all that I knew I learned from Mr.

Lewis who explained to me that the will had been filed and that there was a caveat to the will, and that they wished to retain somebody to defend the will against the caveat, and that they were dissatisfied with Mr. Waters, who was the executor of the will.

— Q. When did you prepare this paper, this power of attorney dated August 30th, 1898? A. On the same day; on that day.

X Q. Where? A. At the house of Mrs. Dill, in her presence.

— Q. After she had given you information about the condition of the estate? A. Yes.

X Q. And told you who the heirs at law of Peter Dill were? A. No, not the heirs at law.

X Q. I asked you if she told you who the heirs at law of Peter Dill were? A. Yes, she told me that the heirs at law were the caveators; the devisees were her children by a former marriage.

X Q. Did she give you all of that information before this power of attorney was signed? A. Yes, sir.

X Q. Why do you recite in this power of attorney that the surviving widow and heirs at law of Peter Dill, deceased, constitute and appoint, etc. A. In one sense they were regarded as the heirs at law because they were adopted by Mr. Peter Dill. I was led to 221 believe that there had been a legal adoption of the children by Mr. Dill, but upon an investigation of the matter I found there had only been a verbal adoption, they were not heirs at law in a legal sense but I had gathered from the conversation that the adoption had been a legal adoption.

X Q. And you had Mrs. Ann Dill acknowledge this power of attorney before a Notary Public? A. Yes, sir.

X Q. Why did you go to that precaution? A. I cannot tell you after this lapse of time. Of course, the object of having the notary public was not to take her acknowledgement to this paper but her acknowledgement to the deed of trust, but in as much as he was there I thought he might take the acknowledgement to the power of attorney as I expected to file it, but I could not tell you after this lapse of time what was going through my mind.

X Q. You don't remember? A. No, but I know that the object of the notary being there was not for the purpose of taking her acknowledgement to that power of attorney; we just took advantage of his presence there.

X Q. Did the notary public and Mr. Weaver sign as witnesses to the contract? A. I am not sure; if the bill was here I could tell you because there is a copy of the contract in the bill.

X Q. When was this contract as to fees signed, that was secured by the deed of trust? A. Well, all three of the papers were signed together; if I had the paper before me I could tell you.

222 X Q. Can't you testify without the paper before you? A. Well, no not positively.

X Q. All I want you to do is to testify to your recollection? A. Yes.

X Q. Was that contract securing a certain amount of fee to you signed at the same time as this power of attorney which is dated the 30th day of August, 1898? A. Yes, they were all three signed together.

X Q. At the same time? A. Yes, successively, at the same time. It was part of the same operation; they were all prepared at the same time.

X Q. Are you sure about that? A. Yes.

X Q. Who prepared this contract with regard to the fee? A. I did.

X Q. You hadn't then been to Baltimore to see the heirs over there? A. No, that wasn't until afterwards.

X Q. How long afterwards? A. I think it was probably the next day; I think it was probably the next day that I went over there, but I am not sure about that; the date of Mr. Strohmeier's acknowledgement will show.

X Q. Have you any idea as to when you first went over to Baltimore, you and Mr. Lewis? A. Mr. Lewis didn't go; I went there alone; I think it was the following day.

223 X Q. You went the following day? A. I think so.

X Q. Are you sure about that? A. No, I am not sure about it.

X Q. You have heard Mr. Weaver and Mr. Miller just testify that there were only two papers signed by Mrs. Ann Dill upon the occasion in question? A. They didn't see the contract signed, if they didn't sign as witnesses, and I know there were three papers signed, and there would be no object in the deed of trust without the contract and there would be no object in the trust without the contract.

X Q. Didn't you just testify that all three papers were signed by Mrs. Ann Dill at the same time? A. Yes, sir.

X Q. Would not Mr. Weaver and Mr. Miller have seen Ann Dill sign the contract? A. I don't know.

X Q. Were they there present in the room when the contract was signed? A. Yes.

X Q. Did you have them to witness it? A. I am not sure.

X Q. Do you know if you had them? A. They were called in by Mrs. Dill for the purpose of witnessing her signature to the deed, whether the contract was signed before they came in I do not know, and I would not know unless I saw this copy in the bill.

224 X Q. When did you draw up this contract? A. It was part of the same proceedings.

X Q. At Mrs. Ann Dill's house? A. Yes, when Mr. Lewis went for Mr. Miller. He had to go all the way down from the Dill house to High Street near N to get to Mr. Barton Miller's office and

found him there and he brought Mr. Miller up to the house of Mrs. Dill and while he was doing that I was preparing these papers.

X Q. Did you prepare this deed of trust there at the house? A. Yes, the papers were all prepared there at the house and all signed there.

X Q. How often had Mr. Lewis seen Mrs. Ann Dill before this interview? A. I don't know; I don't know what acquaintance he had with her or how often he had seen her or what conversation he had had with her.

X Q. Who arrived at the agreement as regards the fees stated in this contract? A. Before Mr. Lewis went after Mr. Miller we discussed what would be a reasonable compensation and I suggested 25 per cent. I told them that I had read this will and it provided that the estate could not be settled until the youngest child became of age, and it was a contingent service and I suggested 25 per cent; she only wanted to give ten per cent, we talked about 15 per cent and we finally agreed on 20 per cent, and I told her that a fee of 25 per cent had been sustained by the court and I thought it was a reasonable fee, and she finally *dued* us down (to use a common expression) to 20 per cent.

225 X Q. Of what? A. Of the value of the estate. I didn't then know what the value of the estate was; she said there were debts on it and the value of the estate was to be determined after deducting the debts.

X Q. You mean to say that this woman after discussing all of the phases of the case decided to pay you 20 per cent of the value of the estate? A. She did.

X Q. Are you positive about that? A. There is no doubt about it in the world.

X Q. Do you swear to it? A. Yes, I am swearing to everything that I say.

X Q. You explained the case to her fully? A. She explained the case to me.

X Q. And agreed to pay you that fee? A. Yes, sir.

X Q. Before you ever drew up this contract and power of attorney and deed of trust? A. Certainly.

X Q. Did you explain it to Mr. Lewis when you explained it to Mr. Barton Miller? A. Yes, the papers were read when Mr. Lewis came back, and either Mr. Miller read them or I read them before they were signed and then Mr. Miller suggested there ought to be another witness and she went to the back of the house and called Mr. Weaver in.

X Q. Did you have any idea about the contract you were going to make with this woman when you went up there? A. No.

226 X Q. You and Mr. Lewis didn't fix it up before you went out there? A. No, I knew before we went out there that she could not pay us anything.

X Q. But you say you knew nothing about the terms of the contract? A. No, sir, we fixed them right there.

X Q. You mean to say that you and Mr. Lewis didn't arrange this matter before you went out there? A. No.

X Q. Why did you carry out the deed of trust? A. To enforce the contract; the contract was no good unless we had a lien on the estate; that is the reason we carried out the deed of trust. I knew that they could not pay our fee in cash and I wanted something that would be an enforceable lien on the estate.

X Q. Who told you you would have to carry out a deed of trust? A. Mr. Lewis.

X Q. When did he tell you that? A. When?

X Q. Yes? A. When we went out there.

X Q. How long before you went out there? A. The same day; we stopped to get the trust as we went out there. I think we got a Law Reporter form, if my recollection is right, before we got on the cars to go over there, and I stated that I would not go into the case unless we had a lien on the property for our fee, and as we knew they could not pay us our fee I wanted a lien on the property to
227 enforce the contract, and that is the reason we carried the deed out there.

X Q. Mr. Adriaans, when you went over to Baltimore what time of day was it? A. Well, I cannot say; my recollection is I got there in the afternoon, but what train I went on I cannot say at this time.

X Q. You went to the home of Mrs. Annie L. Dill? A. I did.

X Q. You introduced yourself? A. No, I was introduced by a letter from Mrs. Ann Dill, which I handed to her.

X Q. Have you that letter. A. No, I gave that letter to Mrs. Annie L. Dill.

X Q. Who was present there at the house in Baltimore? A. Her husband—Annie L. Dill's husband, William H. Dill, who was the son of Mrs. Ann Dill, the widow of Peter Dill; he and his wife were both present and all of the children were present, except William P. Dill, he was working in the factory.

X Q. Was it after dark when you got there? A. No.

X Q. Was it about dusk? A. No.

X Q. What time of the day was it, in the morning? A. No, it was about one or two o'clock when I got there and I remember that we spent something like from a half to an hour going over the papers, and then they said that they were willing to sign

228 these papers that she had signed and told me to go to St. Paul Street and get a Notary Public, and I went to a number of different notaries and finally struck Mr. Strohmeyer. Finally, having been unsuccessful in getting a number of others, I struck him and spoke to him about what I wanted him to do and he went with me to the house of the Dills, and he took their acknowledgement and I had him put in the acknowledgement the ages of these children, and then after it was signed in the presence of William H. Dill and his wife by all of the other parties, then these same papers that they had signed and which had been signed by Mrs. Ann Dill were taken to the factory where William P. Dill was working and he signed them before the same notary who took the other acknowledgements.

X Q. Coming back, now, to this alleged interview at the house of

Mrs. Annie L. Dill, what papers if any were signed there? A. The same papers—the same three papers that Ann Dill had signed.

X Q. Had these complainants in this case agreed to sign those papers before that occasion? A. I don't know about that; they hadn't agreed with me, but what had transpired between them and Mrs. Ann Dill I do not know, but when she got the letter I had brought her introducing me from Mrs. Ann Dill she seemed to be thoroughly aware of the object of my visit; she seemed to be expecting me.

X Q. All these parties did? A. Yes, the father and mother did; they seemed to expect me.

229 X Q. What was the condition of the father's health? A.

Well, he wasn't very robust, or very strong, but he was down stairs in the dining room and sat at the table. He read these papers over and he called the children in. I think the children were in the front room, and he called them and told them it was proper for them to sign the papers.

X Q. So the father read the papers over to himself and then called the children in the room? A. No, he read the papers out loud.

X Q. In whose presence? A. Of the mother Annie L. Dill and the children.

X Q. How many of them? A. They were all there except William P. Dill.

X Q. And you say he explained to the children that it was proper for them to sign the papers? A. He would not have allowed them to sign the paper unless he had been satisfied for them to sign it.

X Q. What paper? A. This deed of trust; that power of attorney was not acknowledged then.

X Q. Why is it that you had a witness and the notary public to sign as a witness to Mrs. Ann Dill's signature, and had her acknowledge it before a notary public, yet you didn't have the complainants to this case acknowledge it before a notary public? A. If I could have foreseen I would have done that, but I have no means for foretelling the future, but had I known that I would be examined in the year 1909 by Daniel W. O'Donoghue in this case I would have taken the precaution of having witnesses sign these papers.

230 X Q. You were endeavoring to make it safe for the security of this alleged fee in this case? A. Yes, I was trying to make ourselves safe.

X Q. Did any one sign as witnesses this alleged contract for legal services? A. You have already asked me that question time and again.

X Q. As regards the signing of the complainants? A. You have already asked that question; I cannot tell you that without seeing the original paper or the copy that is in the record.

X Q. Mr. Adriaans, please state fully and in detail all that was said, as far as you remember all that was said and done at this alleged interview at Mrs. Annie L. Dill's house when you contend that these papers were signed? A. In the first place it wasn't an alleged interview, it was an actual interview, and in the second place I went over there and handed the letter of introduction from Mrs. Ann Dill to

Mrs. Annie L. Dill and her husband, and they seemed to be aware——

Mr. O'DONOGHUE: I don't want you to state what seemed.

A. —they were aware of the object of my visit and they expected me, and they knew what I came there for, there having been previous correspondence between them.

X Q. Do you know this of your own knowledge? A. Yes, she told me.

Mr. O'DONOGHUE: I don't want you to state what she told you.

231 Mr. GIES: What they said is competent.

A. —What occurred was that I showed this letter from Mrs. Ann Dill, and then we went into the case and I told them that a will had been made by Peter Dill in which they were beneficiaries—in which the children were beneficiaries, and that an attack on that will had been made by the next of kin in the shape of a caveat and it was necessary that there should be a defense made to that caveat and that probate of the will obtained if possible.

X Q. Were the children present during this conversation? A. Yes, sir, they were.

X Q. Go ahead and state fully what occurred? A. —and that I was willing to enter upon the defense of this will and meet the attack made by the caveat on the will if they were ready and willing to secure my fee for the services so rendered necessary, and I showed them that Mrs. Ann Dill had already signed papers to that effect so far as her life estate was concerned, and I satisfied them that the papers were proper to be signed, and the father and mother both signed all of the papers that should be signed, and the papers were signed in my presence by all of them—all of the children except William P. Dill then and there, and as to William P. Dill we went to the factory where he was employed and secured his signature thereto.

X Q. Have you stated fully all that occurred and all that was said there? A. Yes, all that I now recall about it.

232 X Q. Can you recall anything that occurred on that occasion? A. No.

X Q. Or anything else that was said on that occasion? A. No, nothing further.

X Q. When you say that "I satisfied them that it was necessary to employ me in this case," and Mr. Lewis, what do you mean? A. I don't mean necessarily that I was the only one that could do the work, but I mean that somebody had to defend that will against the caveat, and that I had been selected for that purpose with Mr. Lewis and that if they were willing to coincide with that appointment that I was there to receive their appointment for that purpose.

X Q. When you say "they" and "them" to whom do you refer? A. I refer to the children who are the complainants in this case.

X Q. You didn't refer to their parents? A. Yes, they were considered as their natural guardians and they took particular pains to see that I was accurate about this thing.

X Q. As matter of fact, didn't you state on that occasion that the object of your employment by Mrs. Ann Dill was to obtain some money for her; that she was in need of money and had no means at her disposal? A. No, sir; I stated that Mrs. Ann Dill was in a distressed condition financially, and that she had told me that she needed money and that she would be able to get money if the probate of the will could be procured and it was for this purpose
 233 that we were to make the defense of the will to enable her to raise money to live upon; that she had people in Georgetown who could have helped her, but they were loath to give her any money unless she procured the probate of the will, and I told Mrs. Annie L. Dill that Mrs. Ann Dill had said that to me, but as for giving that as a reason for their signing these papers, no such reason was given.

X Q. What reason did you give? A. The reason why these papers should be signed was that they were interested in the establishment of that will, and whatever interest they had would be promoted by defending this will against the caveat, and that I had been employed by Mrs. Ann Dill for that purpose, and that if they wished to concur in that employment they could sign the same papers that she had signed, and they agreed to do it.

X Q. Up to that time they hadn't agreed to sign any such papers—the deed of trust or contract? A. Up to that time there hadn't been any papers of that kind drawn up or presented to them for their signatures.

Q Q. Had they, up to that time, agreed to employ you and pay you this alleged fee of 20 per cent? A. That contract was made simultaneously.

X Q. At the time that you were over there in Baltimore? A. Yes, sir.

X Q. And up to that time you had had no dealings with them whatever? A. No, I had never met them in my life.

JOHN H. ADRIAANS.

234 Subscribed to before me this 31st day of March A. D. 1910.

C. ELTON JAMES, *Examiner*.

At this point an adjournment was taken to Friday, November the 12th, at 3 o'clock, at Mr. Gies' office, when the examination of Mr. Adriaans by Mr. O'Donoghue would be continued.

* * * * *

WASHINGTON, D. C., November 12th, 1909—3 o'clock p. m.

Met, pursuant to adjournment, at the office of Mr. Gies, in the Warder Building, Washington, D. C., for the purpose of taking additional testimony on behalf of the defendant John H. Adriaans;

Present: Mr. O'Donoghue for the complainants, and Mr. Gies for the defendant Adriaans; whereupon Mr. ADRIAANS took the stand and his cross examination by Mr. O'Donoghue was continued:

John H. Adriaans.

Cross-examination (continued).

By Mr. O'DONOGHUE:

X Q. Mr. Adriaans, at this interview between you and the complainants in this case at their residence when you say they signed this contract, for the payment of a fee, the power of attorney and deed of trust on the property constituting the estate, what reason did you give them for signing that paper? A. That legal
235 services were necessary to defend the attack made by the caveat on the will, and that unless the will was sustained the complainants would have no interest in the estate.

X Q. Did you tell them the executors were both lawyers and were defending the will? A. That question might have come up; I can't say at this length of time, but I was of the opinion that the beneficiaries under the will would have an independent right regardless of the executors to have somebody of their own selection look after their interests in the property, and they were evidently of the same opinion.

X Q. Did you give them any other reason for executing these papers on that occasion? A. No; incidently the question came up as to the financial condition of Mrs. Dill, but that was not the reason assigned for the execution of the papers; she told me that she was in a distressed condition.

X Q. What reason did you give them as to the necessity of employing counsel on this occasion? A. I told them that it was necessary for some counsel to conduct a defense to this attack on the will, and that Mrs. Dill had expressed herself as being dissatisfied with Mr. Waters, and for that reason she had employed us, and I was there to see whether they concurred in our selection by Mrs. Dill. I was not there to compel our selection, but I was there to see whether they concurred in the selection made by Mrs. Dill of Mr. Lewis and myself. In other words, whether we would receive the support of
236 all of them or simply of Mrs. Dill. If they had selected other counsel of course there would have been no need to get other papers signed by them, but they thought it was wise to concur in the matter with Mrs. Dill and so signed the papers.

X Q. To whom do you refer when you say "they"? A. These complainants.

X Q. What were the ages of these complainants at that time? A. I had the notary write the age of each one of them in the certificate at the time.

X Q. They told you their ages on that occasion? A. They told them to the notary in my hearing.

X Q. You heard them? A. Yes, I had that done on purpose.

X Q. What size were these children on the occasion of the alleged execution of these three papers? A. As far as Marian was concerned she was a young lady at that time, and you would not know but what she was of age by her appearance; and William P.

Dill was of age; Marian Dill was very close of age, and the others I could not just recall about their sizes, but they signed their names very intelligently and their father and mother were both present, and the father witnessed the signing of the names.

X Q. Tell us about what was the size and appearance of the youngest child? A. I cannot say that off hand after a lapse of twelve years, how large they were, or how many feet and inches they were.

237 X Q. Generally what was the size and appearance of the youngest child? A. I cannot remember that; I don't think he was anything out of the normal of a boy of that age.

X Q. Of what age? A. The age he was; I was particular to have the notary insert that in the certificate.

X Q. Did he appear to be a boy of the average size of one 7 years of age? A. If he was of that age.

X Q. Did he appear to be a boy of the average normal size and intelligence of the age given on that occasion? A. I had that impression; of course, I never met them before and I had no way of sizing them up except by the interview that occurred on that occasion.

X Q. Did this complainant Morris Dill, who was seven years of age on that occasion, concur in that employment? A. He concurred in it to the extent that he signed the papers with the others, he expressed his concurrence by the signing of the paper.

X Q. Did you explain to him the reason why you should be employed? A. The explanation was made in the presence of all of them.

X Q. I am asking you about Morris Dill. A. He was there and overheard all of the conversation that occurred between the father and mother and myself and the children participated in the conversation, and I answered every question put by any of them. Of course a child of that age would not be expected to ask any questions, and I could not say at this time that he asked me any
238 questions, and he signed the papers and the father and mother approved of it and saw them sign it.

X Q. You had all of these parties sign these papers? A. Yes, sir.

X Q. For what purpose? A. For the purposes indicated in the paper.

X Q. That is, to enter into a contract to pay you 20 per cent of this estate? A. Yes, sir.

X Q. Did you make known to this Morris Dill the contract that he was entering into? A. It was read in his presence.

X Q. I ask you if you made known to him the nature and extent of this contract which he was entering into? A. I made it known to the extent of reading it to them, and incidentally there was a considerable conversation enlarging on the scope of it; there wasn't any questions asked that were not answered by me, and there was a wild cross fire of questions among all of them when I first went there, and I have no doubt that all of the larger ones asked me questions and I know William P. Dill did.

X Q. On that occasion at the house? A. William P. Dill was not at the house.

X Q. Will you answer whether you entered into a contract on that occasion with Morris Dill whereby he agreed to pay you 20 per cent of this estate for the services you were to render? A. I did.

239 X Q. And in pursuance of that contract you claim that you performed certain services? A. I do.

X Q. Did you make known to Leo Dill who was nine years of age on that occasion the nature of the contract he was entering into with you? A. I did.

X Q. Did he enter into this contract with you? A. He did.

X Q. Did you make known to Edward J. Dill, who was 13 years of age on that occasion, the nature of the contract that you claimed they entered into? A. I did.

X Q. Did he understand the nature of the contract he was entering into with you on that occasion? A. I could not read his mind, but he indicated by his action that he understood it.

X Q. And these other two, Leo and Morris knew what they were doing? A. They gave all external evidence to that effect; they indicated that they appreciated what they were doing, I certainly tried to explain it to them.

X Q. Did you explain to each and all of them the contract they were entering into, as fully to one as to the other? A. I explained it in the presence of all of them, no one more than the other, and the father and mother and all of the children, except William P. Dill; I made the same explanation to all of them.

240 X Q. What was the value of the real estate involved in this suit? A. I do not know.

X Q. You never had any idea? A. No.

X Q. Weren't you told the amount of real estate and personal property involved in this suit when you entered into this contract? A. No, it was an unknown quantity to me; I did ascertain the assessed value of the property?

X Q. When? X Q. Shortly after signing the contract.

X Q. So, when you signed this contract you did not know the real or assessed value of the property involved in this case? A. No.

X Q. Did you have any idea as to the value of this whole estate at the time you signed this contract with the complainants? A. No.

X Q. No idea whatever? A. No.

X Q. It might have been a \$1,000. or it might have been a \$1,000.000. A. Yes.

X Q. Then you didn't explain to these children at the time they signed this contract the value of the estate or personalty involved in the case? A. I explained to them all that I knew. I don't think that question came up at all.

241 X Q. So when you entered into this contract with these complainants there was nothing said about the value of the estate? A. I cannot say at this time whether there was or was not. You see that was 12 years ago and there have been a good many things that have transpired since that time. I am not here to lie to the court, and I cannot say what happened at that interview in

detail; I am giving you my best recollection of what happened and that is all I can do. I can give you a general outline of what happened there, but I cannot tell you particularly whether this subject came up or that subject; I cannot remember about that.

X Q. You don't remember? A. No, I don't remember.

X Q. You may have forgotten some of the important details that occurred on that occasion? A. It is possible, but I think I have a pretty fair recollection of what occurred. Sometimes it happens that things occurring many years ago are more firmly impressed upon the memory than things of recent date.

X Q. Was there anything said by you or any of these complainants as to the value of the estate at that time? A. I cannot answer that question, *they* may have been and there may not have been.

X Q. Did you know the value of the estate at that time? A. I cannot tell you.

Mr. GIES: The witness has answered that question before.

X Q. Did you have any idea of the value of the estate at that time? A. I had a general talk with Mrs. Dill before these papers were signed.

242 X Q. Did you make any representations to any of the complainants on that occasion as to the value of the estate?

A. Not that I recall.

X Q. Answer my question. A. I don't know whether I did or not.

X Q. Mr. Adriaans, what was the condition of this probate case at the time you went to Baltimore and claimed to have had these three papers signed? A. There had been nothing done in the case except the filing of the caveat. There had been no steps taken to frame issues on the caveat, or to bring the matter to a hearing and this was precisely what Mrs. Ann Dill complained about. She said that she had urged Mr. Waters to take some steps and bring this contest to a termination, and that she wasn't able to get him to do anything, and for that reason she wished other counsel, so that when I came in the case there hadn't been anything done beyond the filing of the caveat, and the first thing I did was to take all possible steps to bring this matter to a termination. I prepared to try the case and sought to determine the condition of the mind of the testator by these various witnesses the list of which I have here, and that was the object of my employment.

X Q. Will you just state in detail as far as you remember what the condition and status of this probate case was involving the settlement of the estate of Peter Dill at the time you went over to Baltimore? A. There had been nothing done beyond the filing of the caveat and the purpose of our selection was to do something.

243 X Q. When had that caveat been filed? A. I don't know, the record will show that.

X Q. What was the necessity for these complainants employing further counsel in the case when the executors of the will were lawyers and were acting as attorneys in the case? A. It didn't seem as though they were acting, and whether they were lawyers is a

question of very serious doubt. I have never heard of Mr. Johnson being accused of being a lawyer, and as for Mr. Waters I would have to go a long ways to pick him out for a lawyer.

X Q. That is just your personal opinion of their ability? A. Yes.

X Q. As a matter of fact Mr. Johnson was over the average of a bright man, an able man and a very good lawyer? A. I do not know about his being a very bright man or an able lawyer. I never noticed him conducting any cases in the court, and when he was a justice of the peace in Georgetown he didn't impress me as a man of any great ability. Mr. Johnson didn't take any steps in the case, and Mr. Waters hadn't practiced as an attorney for many years, and while practicing he seemed to have more mal practice than practice.

X Q. Just answer my questions and don't let your private opinion lead you off so.

Mr. GIES: I would rather strike from the record that last answer.

Mr. O'DONOGHUE: No, just leave it there.

244 Mr. GIES: I would rather not have the record show anything of the kind.

Mr. O'DONOGHUE: I object to any elimination from the record.

Mr. GIES: I don't want anything to go in the record as reflecting on Mr. Waters. That is for me as an attorney.

X Q. Has not Mr. Waters to your knowledge been a member of the bar of the Supreme Court for a number of years and had considerable control of cases, including probate cases among others? A. I have no knowledge on that subject as to his ability, or as to the length of time that he has been practicing in the District of Columbia, or elsewhere. I had no acquaintance with him prior to this case, and the impressions I formed of him in this case are rather against that hypothesis.

X Q. Will you state what was the necessity of the complainants in this case employing additional counsel in regard to the estate of Peter Dill? A. They were not employing additional counsel—they were only employing counsel. Neither Mr. Waters or Mr. Johnson had entered their appearance in the case as counsel.

X Q. I mean counsel in addition to these, in the case? A. They were not acting as counsel in the case.

X Q. Do you mean to say that Mr. Waters and Mr. Johnson were not acting as lawyers and executors in the case? A. Neither
245 one of them was acting as attorney or counsel in the case, but were merely acting as executors, and subsequently, to show that they did not regard themselves as counsel they asked the court to appoint counsel.

X Q. To settle the matter will you please tell me what was the necessity for the complainants in this case employing you and Mr. Lewis as attorneys to represent them or their interests in the estate of Peter Dill? A. They understood that their interests would be promoted by employing us. Whether there was a necessity or not is the question for them to have determined. According to my judgment there was a very imperative necessity to employ some one.

X Q. What was that necessity? A. The failure of either one of

them to do anything to bring this contest to a focus. Something like three or four months had elapsed and not the first step had been taken, and Mrs. Dill had seen them time and again and not a thing could she learn, she could get no satisfaction from either one of them; neither one of them would do anything and in sheer——

Mr. O'DONOGHUE: "Desperation."

A. ——yes, sheer "desperation" she called upon us——

Mr. GIES: Quote the word "desperation," if you please.

A. ——to do something in the matter. And at that time it wasn't contemplated that we should antagonize either Mr. Waters or Mr. Johnson, it was our intention to co-operate with them, 246 and for something like six months I did everything in my power to avoid showing any hostility to them and to secure their co-operation in this matter, realizing that we could accomplish more by working together than pulling in opposite directions. I went to Mr. Waters' office something like a dozen times and consulted with him about the case. I went to Mr. Johnson's office five or six times, I guess, and tried in every way to make them realize that our interests were not antagonistic to theirs; that we should reserve our am-union for the enemy and not fight among ourselves, but my efforts in that direction were not seemingly appreciated. I think that Mr. Johnson thought that a three cornered fight would not be to the interests of the estate. Mr. Waters seemed to be very resentful that we should come into the case, and our efforts finally resulted in hostilities and he filed charges against us and I filed counter charges.

X Q. Let us get back again to the question and state briefly what was the necessity for the complainants in this case employing you and Mr. Lewis to represent them, or their interests in the case?

Mr. GIES: I submit that that question has been answered by the witness three or four times already, and the witness has stated over and over again the failure of Waters and Johnson to take any steps to bring the questions involved in the caveat to a trial was the necessity for the employment of counsel in the case by the complainants.

A. I have already answered that question.

247 X Q. Did the complainants in this case go to you to represent them in this case? A. Well, I have already told you that I went to their house; that they had no previous acquaintance with me and that I did so at the request of Mrs. Ann Dill. Mrs. Ann Dill is the one that sent for us, and I went to the house of these complainants with a letter of introduction from Mrs. Dill, the widow of Peter Dill, to see whether they would concur in our selection.

X Q. As I understand you Mrs. Ann Dill, the widow of Peter Dill, employed you to represent her in this estate? A. Yes, sir.

X Q. What fee did she promise to pay you? A. That is expressed in the contract.

X Q. Twenty per cent of the value of what? A. Of the value of the estate.

X Q. Then why did you go over to Baltimore to get these minors and infants to become your clients? A. They were not all minors

and infants, and I didn't know at the time I went over there how old they were. I don't think Mrs. Ann Dill told me that; she asked me to go over there and see these complainants to see if they would cooperate in our employment. In other words, to give them an opportunity to confirm our employment. Besides that, I recognized that Mrs. Dill had only a life estate under the will and that the fee would go to these people in Baltimore, and that if she died while the contest was going on we would not have any redress or means of getting our money, and I realized that we should get the residuary estate to join in our employment.

248 X Q. Why? A. That is a foolish question you are asking now. If the life estate should expire and the property go to the residuary interests before the contest was terminated that would certainly be a sufficient reason for me trying to get the residuary interests to join in this contest. I am surprised at your asking such a question as that. Mr. O'Donoghue, I certainly am.

X Q. Will you please answer the question? A. The question answers itself. I am absolutely surprised that a man with the experience you have had *should* ask such a question as that.

X Q. Will you answer the question, why you went to these residuary legatees to get them to join in your and Mr. Lewis' employment? A. I have answered the question.

X Q. Do you refuse to answer it? A. There is no need to answer it.

X Q. Is that the reason you refuse? A. That is the only reason.

X Q. What was your reason for going to them? A. I went there to give them an opportunity to have their interests represented by the same counsel that represented the life estate, as I thought it was proper to have all the interests represented by the same counsel rather than that additional counsel should come in.

X Q. As a matter of fact wasn't the reason you went over to Baltimore to get these complainants to execute these papers to secure your fee in the case in the event of Mrs. Ann Dill's death? A.

249 That wasn't the sole reason, that was one of the reasons.

X Q. That was one of the reasons? A. Yes, sir.

Mr. GIES: That is selfevident.

A. I am actually surprised that you did not have the perception to see that.

X Q. Please answer my question, wasn't that the reason?

Mr. GIES: I advise the witness, where Mr. O'Donoghue has asked a question and the witness has answered it once or several times over, not to answer the question again, but to state that he has answered it before.

Mr. O'DONOGHUE: I object to counsel advising the witness what he is to do while he is on the witness stand.

Mr. GIES: He is my witness.

Mr. O'DONOGHUE: And furthermore I object to the witness' interrogation of me.

Mr. GIES: I object to that too.

Mr. O'DONOGHUE: But, of course, I ignore his reference to me or

to my legal acumen, or the lack of it. It is not a matter at issue in this case.

Mr. GIES: Nor it is material to the case.

250 X Q. Mr. Adriaans, after Mrs. Ann Dill had employed you, that transaction was closed, was it not—the contract?

A. I thought that was just the beginning of our dealings.

X Q. The contract was fully made and executed from the standpoint of the terms being arrived at and the commission stated, the contract was fully understood between the parties? A. Between us and Ann Dill the contract was closed as far as arriving at the compensation was concerned.

X Q. If you had proceeded to act under that contract without going over to Baltimore to try to get other clients would not these minors over in Baltimore have gotten the same result as was obtained by the course that was actually taken? A. They would have gotten the result of our efforts without paying for them, and we would not have been able after the extinguishment of the life estate to have collected our fee. I knew when I entered upon this employment that the terms of the will would not permit any of the property to be sold until the youngest child became of age, so I knew there was an indefinite period of time. I didn't know how old the youngest child was, but I knew there was an indefinite period of time during which this estate would be in abeyance, and it was foreseen that during that period of time the widow holding the life estate might die, so that in the event that she died during this interval these remaindermen, or these residuary legatees, whichever you call them, if they had not joined in our employment, would have gotten the result of

251 our labors without paying for them, and the extinction of the life estate would have prevented us from getting any money from the life tenant, and our labors would have been rendered without compensation.

X Q. So your object in going over to Baltimore, among others, was to secure the payment of your fee in the event of the death of Ann Dill, the widow of Peter Dill? A. The idea was to have all interests on the side of the will—all interests that would benefit on the side of the will—to have all of these interests represented by us. It follows, as a sequence of that occurrence, that in the event that Ann Dill should die before the liquidation of the estate we would not lose the compensation for our services. If such a thing had happened without these children in Baltimore concurring in our employment we would not have been able to recover our fee.

X Q. At whose instances were the ages of these children put in the acknowledgement of the notary public? A. My own.

X Q. As a matter of fact, wasn't it at the instance of the notary public? A. No, I suggested it to him.

X Q. He first put them? A. No, I had them put in there.

X Q. Did you draw up the acknowledgement? A. All but filling out the jurat.

X Q. Who did that? A. The Notary did that.

X Q. How much of the jurat did he fill out? A. You have it before you now in the bill.

252 X Q. Did you fill out the jurat and leave the ages blank?

A. No, he filled the whole jurat out.

X Q. And you prepared all the rest of the paper? A. Yes, sir, it was already prepared when I went over there with it; it had already been signed by Ann Dill and acknowledged here by her.

— Q. Were these complainants to receive anything in any way out of this estate before the youngest child became 21 years of age? A. That is a legal question. Mr. Waters has already sold off part of the estate in Charles County, and another part of the estate he has already sold off under a deed of trust, but if I was the party buying I should certainly not think I was getting a good title——

Mr. GIES: Mr. Adriaans, you were not asked about the question of the title.

X Q. So, in your opinion, these children could not be benefitted until the youngest one arrived at the age of 21 years? A. That is my construction of the will.

X Q. That has been your opinion all the way through the case? A. Yes, sir.

X Q. When did you first read the will? A. The same time that we went over there to see Mrs. Ann Dill. In the morning—Mr.

253 Lewis and I went over and read the will, and then we took a car and went to Georgetown. I also read the caveat to the will. I read whatever was on file in the case so I could talk intelligently on the situation.

X Q. So, when you went over to see these people you had read the will and caveat and the proceedings in the orphans' court and had arrived at the conclusion that the children could not obtain any benefit under the will until the youngest one had reached 21 years of age? A. I cannot say that; I would say that they could not sell the real estate. Part of the estate was personal property. I have read the account of Mr. Waters in which he claims that the U. S. bonds belonging to this estate were sold, and as far as the personal property was concerned these children derived a benefit as soon as the will was probated. As far as the real estate was concerned I think a proper construction of the will would hold that they could not sell the real estate until the youngest child became of age.

X Q. If you and Mr. Lewis had defended this will, as attorneys for Ann Dill, widow of Peter Dill, deceased, would not the same results have followed as have followed by your attempted defense of the will through the others that you brought into the case by representing both the widow and the children? A. It is a very much involved question, and I doubt very much whether I would have entered upon a defense of the will at the instance of Ann Dill alone without the aid of the complainants to this suit, because in the view that I took

254 of the will and the age of Ann Dill at the time of the signing of these papers, it is problematical whether we could get anything out of this estate if the will was sustained, and I don't believe that I would have entered on the defense of this will unless these Baltimore legatees had joined in our employment.

X Q. Why not? A. Because I would not have gotten anything.

I concluded that the same work that would be beneficial to Ann Dill would naturally and as a consequence be beneficial to the complainants in this case. That would follow as a matter of course, because they were all in the same boat, so to speak. If the will was sustained they got the benefit of the will and if it was not sustained they would not get any benefit under the will, so whatever was done for Ann Dill would necessarily be beneficial to these complainants, and conversely, whatever was beneficial to the complainants in the case as a matter of consequence would be a benefit to Ann Dill, so far as her life estate was concerned. Of course, she would have a dower interest in the estate, but she didn't elect to have a common law dower, and the consequence was her determination to take under the will would be promoted by the will being sustained.

X Q. Do you mean to say that the speedy settlement of the case and probate of the will was as beneficial to these complainants as it was to Ann Dill? A. It was far more beneficial to the complainants that it was to Ann Dill.

X Q. Why? A. Because she only had a life estate and these complainants had the fee.

255 X Q. Is that your reason for stating that a speedy settlement of the case was more beneficial to the remaindermen than it was to the life tenant under the will? A. I don't know that the speediness of it had anything particular to do with it, except that Mrs. Dill had informed me that friends of hers in Georgetown would advance her money for her personal needs if the will was admitted to probate, and for that reason she sought to speed us and her dissatisfaction was with the delay of Mr. Waters.

X Q. Mrs. Ann Dill was the one that urged on you a speedy settlement of the case. A. Yes, they were anxious to have a speedy settlement of the case. Mrs. Annie L. Dill was just as anxious to have a speedy settlement of the case as was Mrs. Ann Dill, the widow.

X Q. Did Mrs. Ann Dill the widow send you to them. A. Yes, originally, we became acquainted with the Baltimore parties through Mrs. Ann Dill.

X Q. And you went to see them in Baltimore? A. Yes, she gave us a letter of introduction to them.

X Q. Will you explain to me, please, how a speedy settlement of this case was more beneficial to these complainants, who were remaindermen, than to Ann Dill, who was the life tenant? A. I am not sure that I could answer that to your satisfaction, but to me it would appear like this: That the longer this estate remained unsettled the longer the doubt and uncertainty would continue, and the more the cost of litigation would increase, and all of these things considered it was regarded as desirable on all hands to terminate the contest as speedily as possible. There certainly could have
256 been nothing gained by procrastination, or by unnecessary delay.

X Q. Is that the best answer you can give to that question? A. I think I have answered it. The answer satisfies me, whether it will satisfy you I don't know.

X Q. Did Judge Cole consent to accept the trusteeship under this

alleged deed of trust? A. I never talked to Judge Cole in my life on that subject.

X Q. He never consented to accept it, did he? A. He wasn't consulted on the subject; I never had any talk with him.

X Q. Did Mr. Clarence F. Norment consent to serve as a trustee under the deed of trust? A. I never talked with him.

X Q. You drew up the deed of trust and put their names in the trust as trustees and never consulted them? A. I never consulted either one of them. Mr. Norment at that time was a landlord of Mr. Lewis and myself. I wanted to select two men who had the confidence of the parties and of the business community and who could not be questioned as to their integrity, and Mr. Lewis and myself selected Mr. Norment and Mrs. Dill selected Judge Cole.

X Q. Why did you hold this alleged deed of trust off the record for nearly two years? A. Because our contract was contingent upon our procuring the probate of the will; we didn't regard that we had
257 earned the compensation until we procured the probate of the will, and we thought the contract was not consummated until that event occurred, and as soon as we got the probate of the will, either the same day or the following day we recorded our papers.

X Q. And immediately Judge Cole and Clarence F. Norment repudiated this trusteeship. A. I understood that Joseph J. Waters—I know that Joseph J. Waters went to Judge Cole, and there was a good deal of fuss about it around the Court House at that time, and he got Judge Cole to relinquish the trust, or to repudiate the trust, and after Judge Cole renounced the trust then Waters went after Mr. Norment to procure him to renounce the trust. Mr. Norment was selected by Mr. Lewis and myself because he was the landlord to both of us at that time, Mr. Lewis being in the Central National Bank Building and I being in the Young Law Building at 6th and La. Ave., and Mr. Norment being agent for both of these buildings and collecting rent from both of us, we thought the trust would be well reposed in him.

X Q. What explanation have you of the papers filed by one or more of the complainants in this case repudiating this alleged contract in which you claim they employed you as their attorney? A. Do you mean the papers that Waters got up about the time of the jury trial in which they asked that we be not permitted to interfere with the jury trial?

X Q. Yes. A. I don't know of any other papers. I had Mrs. Ann Dill appointed guardian ad litem, and after I had her appointed she gave us a power of attorney to act for her and
258 it was after that that Mr. Waters got in his fine work and got her to repudiate us.

X Q. And she did so? A. To the extent of signing these papers. She was led to believe that this will matter could not be settled unless Mr. Lewis and I ceased our activities, and notwithstanding these papers Judge Barnard permitted us to be present and examine the witnesses.

X Q. And didn't she write you, as well as several of the children

telling you that you didn't represent them and that they didn't want you to appear for them? A. I have no letters of that kind?

X Q. Didn't you receive some such letters? A. No.

X Q. Didn't they sign papers for Mrs. Waters which were filed in the probate case stating that you didn't represent them?

Mr. GIES: I object to that question, because it asks the witness to state the contents of papers which he says are on file in the Register of Wills' Office and I advise the witness not to answer the question.

Mr. O'DONOGHUE: I merely wish to bring home to the witness the knowledge of the fact that it was done.

Mr. GIES: I don't know whether it was done or not.

Mr. O'DONOGHUE: Can the witness answer the question?

259 Mr. GIES: I don't think he ought to answer as to the contents of written papers that are not before him.

A. Under the instructions of counsel I refuse to answer the question.

Mr. O'DONOGHUE: I insist upon the witness answering the question. Do you still refuse?

A. I do.

X Q. And the question I wish to ask is based upon answers that you might give to subsequent questions. After such papers were filed in this estate by one or more of the complainants in this case, or by their mother, or such letter was written to you by one or more of the complainants in this case did you proceed to act further for them in the probate case? A. The record of the probate case will show all action that I took both preceding and succeeding such alleged communications or papers.

X Q. So after these alleged papers and notices were filed and brought to your attention repudiating any alleged contract employing you you continued to act for the complainants in this case in the probate case? A. The record will show what I did.

X Q. Mr. Adriaans, there are several papers missing out of this probate case, do you know anything about them? A. I do not. I don't know anything about any papers being missing; I have no papers belonging to the probate case.

260 X Q. Mr. Adriaans, there never was any trial of the issues in this contest before any jury? A. The record will show that.

Mr. GIES: The record speaks for itself.

X Q. Don't you know as matter of fact that there was never any actual contest before any jury on this caveat that was filed in this probate case?

Mr. GIES: I object to the witness answering that question because the record will show what was done in the case.

X Q. Have you produced in this case all of the communications that you have received from the complainants in this case or any of them, or from their mother? A. I have.

X Q. You haven't any others in your possession? A. I have not.

X Q. Did you receive any others that you haven't produced? A. No.

X Q. Have you produced here, or have you copies of letters that you sent to the complainants or any of them, or their mother in reference to this probate case? A. I haven't copies of the letters that I have written to the complainants. I only have copies of the court papers. I didn't anticipate when I wrote to them that any litigation could come up, and the letters that I wrote were purely formal business letters and were not copied on letter press or otherwise, so that I have no copies of any letters that I wrote to them, but they have my letters.

261 Mr. GIES: You mean they should have them?

A. Yes, they should have my letters.

X Q. When did you obtain this power of attorney from Mrs. Dill as guardian ad litem? A. After her appointment.

X Q. When was that, do you recall? A. No, the record will show. I had her appointed and shortly after her appointment, or it might have been coincident with her appointment, I got this power of attorney from her.

X Q. Why did you get the power of attorney from her as guardian ad litem? A. I cannot say at this time just what our reason was, whether it was a reason emanating from Mr. Lewis or from myself. The power of attorney is in the handwriting of Mr. Lewis, and whether it was his suggestion or my own I do not now recall.

X Q. Who had this power of attorney signed? A. Mr. Lewis sent it to Baltimore; that is all that I know about it, except that I know it came back signed.

Mr. GIES: What is the date of that power of attorney?

Mr. O'DONOGHUE: It is dated the 1st day of June, 1900.

X Q. Can you give us any reason why you sent out that power of attorney to be executed by Mrs. Annie L. Dill as guardian ad litem? A. I think we wanted something to show to the court. I think about that time Waters had gotten hostile and we wanted something to show to the court that we were authorized to speak for her as the representative of the children.

X Q. Did you regard your power of attorney signed by the children sufficient or insufficient which you allege they executed on the 30th day of August, 1898? A. This one was to act as a supplement to it.

X Q. I ask you did you regard the previous power of attorney as sufficient or insufficient? A. I would not regard it as insufficient.

X Q. You regarded it as sufficient then? A. It might have been quite sufficient, but we thought it was well to fortify it and supplement it by getting the power of attorney from the guardian ad litem.

X Q. Why did you have Mrs. Annie L. Dill execute this power of attorney in her individual right? A. I don't know anything about how she came to sign it. I wasn't there when she did sign it. I thought she signed as guardian ad litem.

X Q. The power of attorney recites that Annie L. Dill sign- the paper as guardian ad litem and also individually and appoints you and Mr. Lewis as attorneys. A. I did not prepare that paper or I

would not have put those words in there. She had no individual right in the matter.

X Q. You knew she was signing as guardian ad litem? A. Yes, after I saw the paper; I don't think that I saw the paper before it was signed. Mr. Lewis was living down in Maryland at Glen Dale and I think he mailed me that paper after it was signed and executed by Mrs. Dill.

X Q. You knew nothing of it until that time? A. I don't think I did. I prepared a petition for her asking that she be appointed guardian ad litem, and I sent that to her and I think while that petition was being signed Mr. Lewis got that power of attorney up and sent it to her to show that we had the right to speak for her.

X Q. You can give no reason why Mr. Lewis or you had this power of attorney signed by Mrs. Annie L. Dill as guardian ad litem? A. To show that we had authority to speak for her and the children both, that is the reason.

X Q. Didn't you have that authority before this power of attorney was executed? A. As long as the court appointed her guardian ad litem we thought it would add to the previous power of attorney if we had the right to represent the guardian ad litem. At that time the attack had been made by Mr. Waters upon us, and we wanted to show to the court that we did represent the people that we claimed to represent and we wanted to fortify our position with the court.

X Q. And that was the reason you had this power of attorney executed by Mrs. Annie L. Dill as guardian ad litem dated the first day of June, 1900? A. Yes, it was an additional reason. I didn't see the paper before it was sent out, but I procured it to be filed.

X Q. Did you procure it to be filed? A. Yes.

264 X Q. Did the court authorize Mrs. Annie L. Dill as guardian ad litem to employ you as counsel in this case to represent her in the proceedings? A. If the record shows any such employment I will stand by it.

X Q. Don't you know as matter of fact the court didn't authorize her to employ counsel in this case? A. Whatever the record shows.

X Q. Don't you know the court never authorized Mrs. Annie L. Dill to employ counsel in this case?

Mr. GIES: The witness has answered that question twice and I don't think it is necessary for him to answer it again.

X Q. Answer the question, please? A. I have answered it twice.

X Q. Do you refuse to answer it? A. I don't refuse to answer it after I have answered it twice already. I refuse to answer it your way.

X Q. Did you ever have any agreement as to the fee or compensation before entering into or signing of this paper or verbal understanding between you or Mrs. Annie L. Dill as guardian ad litem? A. No additional compensation other than what had already been promised in the previous contract.

X Q. Did she ever agree to pay you any compensation on behalf of these minors? A. Whatever the contract shows. She wasn't a principal to that contract and we regarded whatever we were doing at her request or at her instance was done for the benefit of her

children. She was simply representing her children in the matter.

265 X Q. There was never anything expressly or impliedly agreed upon between you and Mr. Lewis on the one part and Mrs. Annie L. Dill on the other part as regards any fee or compensation for your services in the matter of the estate of Peter Dill's estate?

Mr. GIES: I advise the witness not to answer that question as he has already answered it. Don't answer the questions, Mr. Adriaans, if you have answered it before.

A. As this question has been repeatedly answered before I decline to reiterate my answers.

X Q. Mr. Adriaans, after this alleged interview with the complainants in this case, when you claim these three papers were signed by the complainants to this suit on or about August 30th, 1898, when did you next see them or any of them? A. Well, I don't know that I saw them all at any one time after that; when I went to Baltimore and was in that neighborhood I stopped in the house, and I think I saw some of them three or four times subsequent to that.

X Q. From that time to the present time? A. Yes, the last time I was there I think some of the children were in school and I got there about 12 o'clock. I didn't go there on that business; I had other business in Baltimore, and I took occasion when I had a little leisure time on my hands to visit the house and tell Mrs. Dill what the status of the matter was.

X Q. When did you make the last visit to these complainants—to the house? A. I think it was in 1900; it might have been 266 about the time we filed our bill in equity. I think it was about the time we filed our bill in equity to enjoin the sale, and she told me that she was all worked up about the litigation, and that she was going to let the court settle it; she didn't want to put her name to any further papers.

Mr. GIES: I suggest to the witness that he answer the questions as briefly as he can.

A. My recollection is the last time I saw Mrs. Dill was shortly before we filed the bill in equity, but I don't know just when that was.

X Q. And you haven't seen her or any of the children since then up to the time this bill was filed in equity that we are taking the testimony in now? A. No, not to my knowledge; there has been no occasion for me to see them.

X Q. Have you had any communication with them? A. There has been no occasion for communication between us.

X Q. So all of the communications and interviews between you and the complainants, or the mother of the complainants in this case, occurred between the date of August 30, 1898, and the interview that you have just mentioned occurring about 1900, before you filed your bill in equity? A. So far as I now recall that is about correct.

X Q. Will you state whether you had any other interviews with

the complainants, or their mother, except the one that you have described in August, 1898, and the one in the year, 1900, that you have designated as the last one? A. That is about as mixed
267 a question as I have tackled in a long time; it would take a Chinese lawyer to answer that question; I don't know.

X Q. The question is, whether between 1898 and the time of the filing of your bill were there any other interviews than the two that I have named? A. Is that your question?

X Q. I think the question is plain? A. It is about as complicated as anything I have tackled for sometime.

Mr. GIES: If you can't answer it don't answer it.

A. I don't know the question; I can't understand the question, and of course, I can't answer it.

X Q. Did you have more than two interviews with the complainants, or any of them or their mother, except the first interview and the last one? A. Yes, sir.

X Q. Will you state what occurred at these interviews and when they occurred? A. There might have been as many as four or five interviews. Whenever I visited Baltimore I would—and I was in that neighborhood, I would stop in the house to advise them of the condition of things in Washington, but about how often that occurred I can't say; I didn't keep any record of it. I know there were some visits but how many I cannot tell.

X Q. Designate the number as nearly as you can? A. Four or five.

268 X Q. Is that as near as you can come to it. A. Yes, sir.

X Q. It might have been two and it might have been as many as four or five. A. I said it was four or five; sometimes it was in the daytime and some time at night when I was over there when I would stay over night.

X Q. Did you ever go over there specially to see the complainants or any of them with reference to this case? A. No, except the first time, and the time I think we were going to file the bill in equity, in which I thought they ought to have joined, then I think I made a special trip over there.

X Q. Just these two occasions? A. Yes, sir, I think that is right.

X Q. The other occasions when you went between the first and the last visit were occasions when you were over in Baltimore for other business and would drop by there to see them? A. Yes, sir.

X Q. And you have given us all of the correspondence that occurred between you and the complainants and their mother during the period of these two years? A. Yes, sir, as far as I know.

X Q. Did the complainants ever come over to your office to interview you there in regard to this case? A. No, the complainants never; I think Mrs. Dill sent for me to come to her house several times, and in response to her request, she gave me money for car fare to go down to Marlboro.

269 X Q. Which Mrs. Dill, Mrs. Ann Dill, the widow? A. Yes, sir.

X Q. I am talking about the complainants or their mother? A. No.

X Q. Will you please state as briefly as possible what services you performed for the complainants or any of them in the matter of the estate of Peter Dill, deceased.

Mr. GIES: I instruct the witness not to answer as to matters of record, but to answer as to matters not of record.

X Q. I want the witness to state all that he did, or that he claims to have done for the complainants, or any of them, in the matter of the estate of Peter Dill? A. The record contains fully all that I did in their interest and for their behalf and it does not need any additional statement from me.

X Q. Do you mean to state that this record here shows all of the services that you rendered to these complainants in the matter of the estate of Peter Dill? A. Well, I suppose the fact that I interviewed something like thirty witnesses, and going to their houses for that purpose, would not be shown in this record, but I did do that.

X Q. Is there anything else? A. And I might have done—I cannot say in a period of twelve years backwards what I might have done; I cannot now say what things I might have done that far back, but I know one thing that when I became once fully identified with the case I took this list of witnesses—that was one of
270 the first things I did—I took this list of witnesses and went to their houses and asked them what they could testify to if they were summoned to court. I did that very shortly after becoming identified with the case, and the result of those interviews determined me to bring the thing to a focus. I saw that I had a strong case and could produce ample evidence before a court and jury to sustain that will and I took every known step then to bring the contest to an end.

X Q. Was there ever any serious contest of this will? A. Yes, they had Mr. D. W. Baker, and they had Mr.—what is his name, he was president then of the Lawyer's Title Company, Mr. Schmidt, Mr. E. L. Schmidt, and they had two Baltimore lawyers, and it looked as though there was going to be a very formidable contest, and I did everything I could do to bring the thing to a focus. I wanted the thing settled and I left no stone unturned to bring the thing to a focus, and then upon the death of Mr. McColgan, who filed this caveat, it seemed like all of the push behind the caveat dropped.

X Q. When did he die? A. I don't know when he died; I suggested his death to the court, and the record will show, and obtained a nisi order, directing the parties to employ new counsel.

X Q. Does this record show all of the services you claim to have rendered the complainants and for which you claim you are entitled to compensation? A. The record shows all of the services that were rendered in the court in connection with that case; it does not
271 show the services rendered outside of the Court. For instance, it does not show that I went to Marlboro and appeared there three or four times and made arguments before Judge Merrick. It does not show that I interviewed prospective witnesses, and it does not show the correspondence I had with the parties, but so far as the

services in this case were concerned the record will show what I did in the court.

X Q. Will you please state fully all of the services you rendered and for which you claim compensation?

Mr. GIES:

Q. Mr. Adriaans, have you answered that question? A. I thought I had.

Mr. GIES: I think you have answered it more than once and I will instruct the witness not to answer it again.

I think you have answered it more than once and I will instruct the witness not to answer it again.

Mr. O'DONOGHUE:

X Q. Then you haven't anything further to answer in reply to my question? A. I think I have answered it pretty thoroughly.

X Q. You think that you have set upon the record all of the services that you claim compensation for from these complainants? A. I think I have said all that I need to say on the subject, and perhaps more than I needed to have said.

X Q. When did you last render any services to the complainants, or any of them, in this estate? A. I attacked the account of Mr. Waters which I regarded as inimical to their interests; I surcharged and falsified that account, but I don't know the date.

X Q. Is that the last service you claim to have rendered to
272 these complainants in the estate of Peter Dill? A. If the records show any subsequent services I stand by the record.

X Q. After the will was finally admitted to probate and record do you claim to have rendered any services to the complainants in this case, or to any of them, in regard to the estate of Peter Dill, other than the services you have just mentioned about objecting to the account of Mr. Waters? A. I can't say without inspecting the record. but I stand on the record, whatever that says I will stand by.

X Q. You place your right to enforce the collection of your fee under that deed of trust upon the record in the probate case, is that a fact? A. I place my right to recover compensation for the services that I rendered in the estate of Peter Dill not only upon the record in this probate case, but upon all of the services that I rendered in the estate of Peter Dill; some of the services are not shown in the record.

X Q. I want to know what services are not shown in that record? A. I think I have already stated that at least a dozen times.

X Q. Outside of what the record in the probate case shows? A. I don't propose to repeat it.

X Q. Will you state any services that you rendered to the complainants in this case, or to any of them, between the time that the will was finally admitted to probate and record and the time Mr. Waters filed this account that you excepted to? A. Whatever
273 the record shows I will stand by it.

X Q. You don't wish to add to the record in that regard?
A. No.

X Q. You recall no other services that you rendered except what the record shows during that period, from the probate of the will to the filing of the account by Mr. Waters? A. I considered that when we filed this bill in equity to enjoin the sale that it was done for their benefit.

X Q. And do you claim that you are entitled to compensation for services rendered in that equity suit? A. It was part of the services for which we seek compensation; of course, it wasn't foreseen at the time, but it was certainly in the line of my duty and for the benefit and interest of the complainants. All through this matter I was actuated solely with the idea of doing what I could for the benefit of these infants. Of course, I would not say that I was unselfish nor in ignorance of my rights in the matter. I was trying to earn my fee, but there was no time when their interest and my own conflicted, but when I filed this suit Equity No. 21,889 I considered that I was doing it for their benefit as well as my own.

X Q. What was the purpose of the suit you have just mentioned? A. To enjoin the sale.

X Q. That was the equity suit to which you have referred in this cross examination? A. Yes, sir. I claim that Mr. Waters was
274 acting disloyally to this estate, and it was his duty to pay the interest, but he proceeded under the deed of trust and advertised part of this property for sale.

X Q. Did they authorize you to file this equity suit No. 21,889?

Mr. GIES: The absurdity of that question is so apparent that I advise the witness not to answer it.

X Q. Did they consent to the filing of the suit or the action you took in filing the suit? A. They were not parties to the suit; I didn't get their consent and I didn't regard their consent as necessary, but in the filing of the bill I had considered that their interest would be promoted by filing it in their name, and I consulted them about it, but they had become so tired of the litigation that I seemed to make no headway with them in that regard, and besides when I went over there to see them the children were at school and I talked with the mother and she had become so hostile with this litigation that she didn't want to have anything more to do with it.

X Q. Then the mother of these children as guardian ad litem and individually refused to join in the bill in equity or have you represent her or the children in that suit? A. No, she talked about it and thought it would be beneficial but she did not want to be identified with it.

X Q. And she refused to join in the suit or to have the children join in the suit? A. She had no business to join in the suit.

X Q. And she refused to have the children join in it? A. I explained the matter to her and she told me if we filed the suit
275 it would accomplish the same thing as if they filed it, and she would rather have us file it. I explained it to her and I tried to advise her what would be best for the children to do, and told her that I did not think Waters had a right to sell the property, and she seemed to appreciate it, and she said it would accomplish the same

result if we filed it and she was so tired of the litigation that she said she would rather not join in the suit.

JOHN H. ADRIAANS.

Subscribed to before me this 31st day of March, 1910.

C. ELTON JAMES, *Examiner*.

The session was continued to November 15th, 1909, at 3 o'clock, p. m., at Mr. Gies' office.

* * * * *

WASHINGTON, D. C., *November* 15, 1909—3 o'clock p. m.

Met, pursuant to adjournment, at the office of Edward L. Gies, Warder Building, Washington, D. C., for the purpose of taking further testimony on behalf of the defendant John H. Adriaans.

Present, Mr. O'Donoghue, for the complainants, and Mr. Gies for the defendant Adriaans, and the defendant John H. Adriaans in person, who is present for further cross examination by Mr. O'Donoghue:

276 Mr. GIES: Mr. Adriaans wishes to correct one of his statements before cross examination and I think he had better do it now.

Mr. O'DONOGHUE: I object to any amendments to the record.

Mr. ADRIAANS: I believe I said in my testimony that the caveat succeeded the petition for the probate of the will. On an examination of the record I find there were two caveats, one succeeding and another preceding the petition for the probate of the will. On an examination of the record I find the will, which was dated February 13th, 1896, was filed in the Orphans' Court on the 24th day of February, 1898, and the caveat by the next of kin of Peter Dill was filed on the 4th day of March, 1898, and the petition for the probate of the will was filed on the 2nd day of April, 1898, and the answer of the caveators to the petition was filed on the same day, and the replication was filed on the 19th day of May, 1898, and that was the condition of things as they existed at the time Mr. Lewis and I were called into the case.

Mr. GIES: Is that all you wish to say, Mr. Adriaans?

A. Yes, sir.

277 Cross-examination continued.

By Mr. O'DONOGHUE:

X Q. Mr. Adriaans, will you state again when you considered that you completed your services for which you claim you are entitled to a compensation? A. I don't think they are completed yet.

X Q. From the complainants in this case? A. By the terms of the power of attorney my services were continued until I collected the money coming due to them, and it was part of the duty impressed upon Mr. Lewis and myself by the power of attorney to col-

lect the money coming due them from the estate, so in that phase of the case my services have not terminated.

X Q. What extent or percentage of your services have been completed in your view of the matter. A. The part of our services relating to the establishing of a right to anything from the estate, that particular part of our services has been successfully completed by the admission to probate of the will.

X Q. What proportion or percentage of the services do you regard as having done—what percentage or proportion do they bear to these that you yet have to do? A. Well, I consider that as 100 per cent of the services; the other is the sequence of the services performed.

X Q. You consider that you are entitled at the present time to the entire amount? A. Yes, sir.

X Q. When did you complete your services for which you think you are entitled to compensation from these complainants?
278 A. Well, I presume the services were completed when we obtained the probate of the will.

X Q. So that in your opinion your contract with these complainants was that on the probate of the will you were entitled to the compensation which you claim under the contract? A. I don't think that was the contract; the contract will speak for itself.

X Q. I want to know when you completed the services under which you were claiming this compensation under the contract? A. That is a legal question; that depends on the construction of the contract.

X Q. Will you please answer the question; tell me when you completed the services for which you claim compensation from these complainants under your alleged contract? A. It may be a question whether the services have been completed; it is a part of our duty to collect the money coming due to these complainants in this case, then the services have not yet been completed, but if by their action in this case they have put it out of my power to perform that part of my duty, then the services have been completed and were completed by the obtaining of the probate of the will.

X Q. So that you consider yourselves entitled to compensation for services from these complainants on the probate of the will according to your contract? A. I think so. Of course, I am not here to construe this contract, but that is my view.

279 X Q. I am just asking you the fact as to when you completed your services? A. That may be a question of legal interpretation.

Mr. GIES: He has answered, I think Mr. O'Donoghue.

X Q. So that on the probate of this will you considered yourself entitled to the compensation that you claim under this contract? A. It is a legal question as to the interpretation of the contract.

X Q. Can't you answer that question more specifically? A. No, I can't; it is a question for the court.

X Q. What demand, if any, did you make for compensation from these complainants on the probate of the will and the settling of the contest of the estate of Peter Dill? A. I made a demand on the ex-

ecutor in writing because the executors were about to pay these parties, and I claimed that I had a lien on so much of this money as was liable to our claim, and that demand is in writing and filed in the case.

X Q. Did you ever make any demand on these parties, or any one of them for payment of this bill that you claimed for services rendered? A. Not otherwise than through filing the petition in the probate case when the account was attempted to be stated and distribution was attempted to be made, then I filed this claim against the distributees in this probate proceedings.

X Q. That is the only claim that you have made of them for the payment of this alleged fee that is claimed by you and Mr.
280 Lewis? A. Yes, sir.

X Q. You have never made any other claim whatsoever since the probate of the will? A. No.

X Q. You say that is the only claim? A. That is the only claim I was entitled to make under the contract; I was entitled to take our fee out of the money coming to them; that was the understanding. I knew the source of the money coming and I was to take it out of that source.

X Q. What happened to that claim of yours that was filed by way of petition? A. There has been no adjudication of it; it has been ignored by Mr. Waters.

X Q. You never brought it to the attention of the court? A. No.

X Q. Why not? A. I did not consider that was the tribunal. That was the question of the settlement of the estate of Peter Dill and what should happen to the funds when the account was passed and approved, that was a matter between living people and not dead people.

X Q. Then why did you present your claim to the executors of Peter Dill? A. So as to give notice that we claimed a lien upon the funds before they made distribution of them; we were placed in the position of creditors of the estate and we wanted to have something on the record so that they could not say we didn't give them notice of our claim.

281 X Q. When did you file this notice of your claim with the executors? A. The record will show all of that?

X Q. About when was it? A. I cannot say.

X Q. As matter of fact you know the distribution of the funds and moneys was made to the beneficiaries under the will of Peter Dill? A. I don't know anything about it; I am in total ignorance of it.

X Q. Do you mean to say that you didn't know that the beneficiaries under the will of Peter Dill have received a pro rata share of the estate of Peter Dill? A. I don't know anything about it.

X Q. Haven't you gone over the papers in the probate case of the estate of Peter Dill? A. Yes, but that didn't show me that they had received the money; it says how it was to be distributed, but it doesn't say they got it; I don't know yet that they got it.

X Q. Did you investigate to find out whether they did or not? A. No.

X Q. Could not you find out from Mr. Waters or Mr. Johnson?

A. I think Mr. Johnson had died by that time.

X Q. Didn't you find out from Mr. Waters? A. He didn't seem to know enough to tell us anything.

X Q. Couldn't you have written to any of the beneficiaries
282 and found out? A. I knew at that time they were attempting to ignore us and it would not have served any useful purpose to write them.

X Q. How did you know that? A. They had previously signed a paper in the criminal court when the issues came up to be tried before the jury, in which paper, drawn up by Mr. Waters, and signed by them, they said they didn't want to have the jury trial interfered with, and I was informed they had changed their allegiance.

X Q. From whom to whom? A. At first they were dissatisfied with Mr. Waters and came after us, Mr. Lewis and myself, and then it seems they returned to their first love and repudiated Mr. Lewis and myself.

X Q. And you had notice of that fact? A. No further notice than what the record shows. These papers were all drawn up and it seems they were signing anything Mr. Waters gave them without consulting us; at the same time I was present in the court and saw what happened there.

X Q. That was before the will was admitted to probate and record? A. That was at the same time as the examination of the witnesses; it wasn't more than ten minutes; they just examined the witnesses to the will, and the court directed the jury to bring in a verdict.

X Q. That was prior to the filing of the caveats to
283 subsequent (in pencil)
the will of Peter Dill? A. It was prior to the issues being filed.

X Q. And Mr. Waters conducted it? A. I was there and told the judge to ask the witnesses certain questions that were in the issues, and Mr. Waters didn't seem to want to have those questions asked and the judge himself asked certain questions that were in the issues, and the case—the only question was whether the will was read to Peter Dill and whether he had an understanding of the terms of the will, and all three agreed that he didn't hear the will read and had no knowledge of his understanding of the terms, and I remember the jury hesitated about bringing in a verdict, and the judge instructed them and they found in favor of the will.

X Q. You didn't ask the witnesses any questions? A. I told the judge to ask the witnesses certain question and he did so, and then the witnesses said the will wasn't read in their presence and they had no knowledge of what transpired between Mr. Dill and Mr. Waters previously.

X Q. When was this formal trial of the will of Peter Dill? A. I think it was in January, 1902; the record will show; it was just after the Code went into effect.

X Q. As a matter of fact wasn't it back in 1900, just after the code went into effect, just after the Code of June 28th, 1898? A.

No, sir, it was on January 16th, 1902; we obtained the probate of the will in 1900, and two years after that they obtained a vacation of our decree, and this was when they brought the issues to
284 a trial by a jury; and the jury sat on the case on the 16th of January, 1902, and about a week after or ten days a Court of Appeals decision came out holding that the juries were illegally impanelled; they were empanelled before the code went into effect and could not sit in cases after it became effective.

X Q. After Mr. Waters had had this will admitted to probate and record did you then present your claim and demand payment of the complainants for the compensation you claimed to be due for legal services rendered under your contract? A. I presented a claim to the executors.

X Q. You presented none to the complainants? A. No.

X Q. And you never have presented any to them up to the present time? A. No, because I didn't deem it necessary; I looked to intercept the source from which they were to receive the money and from which we were to be paid; I was to have a lien on the source from which they were to be paid.

X Q. When did you file this bill for the purpose of enforcing the alleged lien that you claim on the real estate of the complainants? A. I can't say that.

X Q. About when? A. I don't know; you have got the bill there and it will tell you.

Mr. GIES: The bill is not here.

A. It was about the time of the advertisement of the sale.

285 X Q. You don't remember the date? A. No.

X Q. You have never pressed that suit or carried it to a final hearing? A. For the reason that I didn't want to litigate this same matter in two different courts, and I didn't want to subject the complainants in this case to the cost of unnecessary litigation. If it had not have been that we wanted to attempt to stop that sale we would not, probably, have filed the bill at all. In other words, at no time, have either Mr. Lewis or myself shown any willingness to subject the complainants to any unnecessary costs and if we could have urged the settlement of the claim without filing the suit we would have done so. And yet, I am not hostile to them; and of course, Mr. Lewis is dead, and we haven't evidenced any determination to put them to any unnecessary costs. That is the reason I haven't prosecuted the case.

X Q. Will you state again your reason for filing that Equity Suit No. 21,889? A. The primary reason was to stop the sale of the property which was advertised that belonged to the Dill estate. The incidental reason was to substitute new trustees for those who declined to act.

X Q. Mr. Adriaans, you had your deed of trust of record prior to the filing of this equity suit No. 21,889? A. Yes, sir.

X Q. Would not that have protected any right that you claimed under it? A. It was a deed of trust under which the trustees
286 refused to act; it was an unenforceable trust; it was what you would term a dormant trust, and I wanted to work it up and

make it a live trust and so we filed a bill to substitute new trustees who could enforce the trust and release it.

X Q. Why have you let that remain a dormant trust all these years? A. Because we had every reason to believe and to hope that we would obtain a settlement through the probate proceedings; if these complainants had let us have our way there would not have been any trouble.

X Q. What reason led you to believe and hope that you would obtain a settlement through the probate proceedings? A. The fact that it was possible to do so.

X Q. Was that the only reason? A. Yes, I should suppose a person of common sense would know that.

X Q. When you presented your claim to the executors or the surviving executor and didn't receive a settlement of your fee in compensation for your services, why didn't you then pursue this equity suit No. 21,889 and enforce the trust? A. There were other reasons; I was in financial straits owing to the difficulty I had with the Court of Appeals and the other court and I needed all of the money I had to conduct those matters with; there had to be publication and various other matters and I had my hands full with other things that I had at that time.

X Q. How about Mr. Lewis? A. He seemed to be in
287 straits too.

X Q. Do you know? A. Yes.

X Q. He told you so? A. Yes, he told me he had a mortgage on his property at the time, but it seems he had a cancer and could not give much of his time to work and he seemed to be hard up.

X Q. Is that the only reason you had for not pushing this case No. 21,889 and enforcing your claim? A. An additional reason was that under the terms of the will there could not be a sale of the real estate until the youngest child became 21 years of age, and I apprehended that any prospective purchaser would look into that question and would refuse to take the title, and one of them did. The one of these pieces of real estate that was sold at auction and he refused to take the title from Mr. Waters as executor but was willing to take it from him as trustee under a trust that was executed by Mr. Dill in his lifetime, and that confirmed the impression that I had that no good title could be made until the children became of age, and I apprehended that when that time arrived they would want to see our fee paid, and I did not want to increase unnecessarily the cost by attempting to collect our fee and so we concluded to let the matter rest in abeyance until that time.

X Q. Mrs. Ann Dill died about the year 1906 did you make a demand on her for her part of your fee before her death? A. I knew what her condition was, and I knew it would do no good to make any demand on her because her financial condition was such that
it did not justify me making a demand on her.

288 X Q. So you made no such demand on her after you performed your services and had the will probated? A. There was no demand made on her and the complainants because I apprehended they could not get anything out of the estate until the estate

was settled, and that could not be legally done until the youngest child became of age—no distribution or sale, as the power of sale was deferred until the youngest child became of age.

X Q. In spite of the fact that these complainants had repudiated you and Mr. Lewis as their attorneys just prior to the time of this jury trial in January, 1902, you nevertheless presented no claim or bill to them, or to Mrs. Ann Dill, for payment up to the present time? A. I don't think they repudiated us; I simply think they were misadvised and misled by an unscrupulous man.

X Q. Did you ever make any demand on them for your services? A. I have told you that over and over again. I decline to answer any further questions of that description because it has been answered repeatedly.

Mr. GIES: If the court would adopt a rule to tax costs for unnecessary questions on counsel I don't know where Mr. O'Donoghue would stand in this case.

Mr. O'DONOGHUE: I am not going to answer to the discovery as to how much or how little I have.

X Q. Did you notify the complainants in this case of the filing of the bill in equity cause No. 21,889? A. There was no
289 order of publication on that.

X Q. So that you didn't send them any notice of the filing of that suit? A. I didn't say that.

X Q. Well, did you? A. I don't remember.

X Q. Would you not remember it if you did so? A. I might.

X Q. You don't remember. A. I might have sent them a copy.

X Q. Did you send them a copy of the bill? A. I don't remember.

X Q. Don't you think you would have remembered if you had done so? A. I might have done so.

X Q. Mr. Adriaans, in regard to this interview with Mr. William P. Dill at his place of work when you claim that he signed the three papers—the power of attorney, the deed of trust and the contract for your fee for services, on to wit the 30th day of August, 1898, where did all of that take place? A. At the factory?

X Q. Where he was working? A. Yes, sir.

X Q. It was towards evening? A. I can't say; it was summer time, and it was probably about five or six o'clock. Somewhere about that time.

X Q. Did you read these papers to him? A. I am not sure about that; I think I handed the papers to him; I know we were
290 shown in the office of the factory and he was sent for to come down. I told the gentleman in charge I was from Washington and was an attorney and wished to get his acknowledgment to some papers, and they sent for him to come down, and my recollection is I handed the papers to him—I am not sure about that. I think I didn't read them because there were other persons in the office who were not interested in this matter and I thought that Mr. Dill would not care to have his private affairs discussed before the other people there and I handed these papers to him for

his perusal and he read over the papers and I told him there was a notary with me and if he chose to sign them I had brought him along for that purpose, and he saw the signatures of his brothers and sisters and his father and mother and he signed them; I think he had the papers something like twenty minutes in deciding.

X Q. How do you know that he had them twenty minutes? A. It must have been twenty minutes or a half hour.

X Q. What reason did you give him for signing these papers? A. I told him he was mentioned in the will of Peter Dill and unless that will was sustained against the caveat that he would not benefit by the will; that it was an attack made on the will by the caveat and it was necessary for somebody to fight this caveat and obtain probate of the will, and that by doing so if the fight was successful that he would come into something as had been provided for him by the will.

X Q. Did he understand it? A. I think so.

291 X Q. Did you show him any letter from Ann Dill the widow of Peter Dill? A. No, I had given that letter to his mother.

X Q. Did you state to him that Ann Dill was in need of funds or money? A. I don't know that I said that; I might have said it. Mrs. Dill was in need of money and she had an opportunity to get money provided she could get this contest over and the will sustained. Friends of hers would advance her money if the will was sustained, but I am not sure that I said that, but I told him the object of our visit was to see whether he would agree to our employment to fight the caveat and he understood that thoroughly.

X Q. Did you explain to him the papers that you gave him to be signed? A. He read the papers and he might have asked some questions; if he did I answered the questions truthfully.

X Q. You don't deny that you said to him that Mrs. Ann Dill was in need of money, and that was one of the objects of your employment? A. No, we contended the object of the employment was to obtain probate of the will, and as a first incident to that will being admitted to probate, as a result or benefit of that employment, there would be a way provided whereby Mrs. Ann Dill would come into money.

X Q. Did you state that to him? A. Yes, sir.

X Q. Did you explain that to him? A. Thoroughly.

292 X Q. Do you remember that? A. Yes, but I never told him the object of these proceedings was to, or got him to sign those papers, for the purpose of enabling Mrs. Ann Dill to get money; I never said anything of that description at all. I told him that would be the resultant of our action.

X Q. What would? A. If we obtained probate of the will that would make it possible for Mrs. Ann Dill to come into money.

— That is old Mrs. Ann Dill? A. Yes.

X Q. You told him that you had been retained by her? A. Yes, and he knew it; he saw her signature on the papers before him.

X Q. Did you tell him you were looking after her interests? A. No, not her interests alone. I told him I had been employed by her

to fight the caveat and they were as much interested in it as she was, or more interested in the will than she was, and I was there to see whether they concurred in our employment, and that was the object of our visit and that it was wise to have the same counsel to represent them.

X Q. Do you mean to tell me that when you undertook to act for these complainants in this case that you tried to cooperate with Mr. Waters? A. Yes, sir.

X Q. And aid him? A. Yes, sir, undoubtedly.

293 X Q. And you had no idea at that time that he would oppose you or be hostile to you? A. No, I had never met him before, and after that I went to his office several times in the evening; several times I went to his office and talked with him about the case.

X Q. You knew he was a lawyer before that? A. I knew he had a shingle out as a lawyer, but whether he was a lawyer I didn't know; I knew what Mrs. Dill had said about him.

X Q. Mr. Adriaans, if this estate was already represented by one or two lawyers what was the necessity for the beneficiaries in the estate obtaining further counsel?

Mr. GIES: I object to the question as the record doesn't show there was any other lawyer employed in the case prior to the employment of Mr. Adriaans and Mr. Lewis, and I do not think it is necessary for the witness to answer the question.

A. Under the instruction of counsel no answer seems to be necessary to that question, besides what was the necessity of employment of further counsel was a question for the employers to consider and not a question for the employes.

X Q. Did you not solicit the complainants in this case and represent to them that it would be beneficial and necessary for them to employ you? A. No, not necessarily to employ me. I said Mrs.

294 Ann Dill thought as she had employed us it would be to their interests to concur in that employment, rather than to have strange counsel of their personal preference or selection. I didn't force our services on them, but I intimated that so far as we were employed in the case by Mrs. Dill that it would be better for them to employ us, or concur in our employment than to bring an attorney of their selection in the case; that we were on the spot and they lived in Baltimore, and if they got any one it would probably be a Baltimore attorney and they would not be on the spot.

X Q. Do you mean to say that you didn't state to the complainants in this case at the interview had with all of them except the one at the factory where you saw him that it was necessary for them to employ counsel in this case? A. If the interrogatory means by that that I said it was necessary for them to employ me as counsel I made no such statement, but if it means that that it was stated that it was necessary that they should be represented by some counsel I might have said that because of the attitude of Mr. Waters is what brought us into the case.

X Q. So you did state to the complainants in this case that it was

necessary for them to employ some counsel in the case? A. I might have said that.

X Q. Don't you know as a matter of fact whether you did say that or not? A. No, I do not.

X Q. Don't you know whether you did or not? A. It is very likely that I did; I believed it to be true and so believe now.

295 X Q. Will you please state as briefly as possible what necessary services, if any, either you or Mr. Lewis, or both of you performed for the complainants in this case, or any one of them, in the matter of the estate of Peter Dill?

Mr. GIES: This question has been answered according to my recollection several times already at this and the last session. If the witness has anything to add let him state it, but if he has nothing further to add to the answers already made I advise him — to answer the question again.

A. I have nothing to add to the previous answers to the same question.

Mr. O'DONOGHUE: I insist on the witness answering this question.

Mr. GIES: The question having been answered several times before there is no need of repeating it.

X Q. You have never made a demand on any of the complainants to this cause on their arrival at the age of 21 years or at any other time thereafter? A. That question has been answered over and over again.

X Q. And you refuse to answer it? A. I don't refuse to answer it, but I refuse to answer it again because it has been answered several times.

Mr. GIES: And at this session.

Mr. ADRIAANS: My friend Mr. O'Donoghue seems to be hard up for material.

296 X Q. Have you in your possession or do you know of the whereabouts of this alleged contract for services entered into according to your contention between the complainants and you and Mr. Lewis, or as to the deed of trust purporting to secure the same? A. I have looked for both papers and cannot find them, and I do not know where either of them is at the present time; I have no doubt they are both still in my possession, but I fear they are in the wrong jacket, of some other case, as it has been done heretofore, that the papers of one case would get in the jacket of another, and I have no doubt something of that kind has happened in this instance. The papers were last in my possession about the time I filed that bill in equity, but where they are now I do not know.

Mr. GIES: I wish we could find them; we would be glad to find them and produce them if possible.

Mr. O'DONOGHUE: You are not half as anxious to have them produced as the complainants in this case.

Mr. ADRIAANS: And I will add here if I find these papers before the hearing I will produce them in court.

Mr. GIES: And I will make the same statement.

X Q. Mr. Adriaans, what do you mean when you say Mr. Waters antagonized you in the matter of the proceedings in the estate of Peter Dill? A. He resented our coming into the case; he didn't like to have the management of the case taken out of his hands, and we were employed to do that identical thing; to take it out of his hands, not because of antagonism to him but for the benefit of the estate. In other words, he was making no progress, and there didn't seem any likelihood of his making any progress; he was taking no steps whatever, and the sole object of our retention in the case was to do something and to bring this matter to a focus and terminate it, and I was prepared to fight for that will and did everything in my power to hasten the matter along—I interviewed a number of witnesses, and when I found I could not take Mr. Waters along with us in the fight we had to leave him behind and he resented it; he thought he was the whole thing in the case.

X Q. As a matter of fact the probate of the will was obtained by Mr. Waters as attorney as the record in this case shows. A. I don't think it is worth the paper it is written on; I don't think so.

X Q. Has it ever been set aside? A. I don't think it is worth the paper it is written on for two reasons, the first reason is that one judge of coordinate jurisdiction has no power to set aside the decree of another judge, and especially after the lapse of two years, the final decree passed by another judge of the same jurisdiction, and secondly because the verdict of the jury upon which the second probate is based was declared by the Court of Appeals to be absolutely void because that jury was illegally impanelled, and for those two reasons that second decree is absolutely void.

298 X Q. You heard me ask my question and you know I didn't ask you as to your opinion of the validity of that decree. I asked you as a matter of fact if that decree that Waters obtained is not still standing unreversed of record? A. As a final decree in the case?

Mr. GIES: I advise the witness not to answer as to matters of record. The question also calls for a legal opinion.

A. The record answers that question.

X Q. You took no proceedings to set that decree aside or to impugn it in any way? A. The record will answer that question.

X Q. And the court overruled your attack? A. No, the court didn't pass on it at all. I filed a brief in which I attacked that proposition.

X Q. And the court just ignored it? A. It never came up for a hearing.

X Q. And you never brought it up for a hearing? A. The record will show just exactly what was done, but I have attacked that decree over and over again.

X Q. And the court has paid no attention to you?

Mr. GIES: The witness has answered that question.

X Q. You don't think much of Mr. Waters' ability as a lawyer?

Mr. GIES: I object to the question and instruct the witness not to answer the question; it is not material to the issues in the case.

299 X Q. Will you answer that question? A. I have no answer to make in view of the instruction of counsel; my opinion is not evidence anyway.

X Q. Did you give the fact as claimed by you of Mr. Waters' inability or unreliability as also a reason to the complainants for employing you and Mr. Lewis? A. I said that Mrs. Dill claimed that Mr. Waters was not acting in the case and was not doing anything; it was not a question of Mr. Waters' inability or unreliability, but it was a question of his non action, and I had not previously met him—at the time these papers were signed, and if his name was mentioned in the matter it was not a question of his inability, or unreliability or competency, but simply a question of his non action.

X Q. Mr. Waters as executor and attorney for the executors refused to cooperate with you in the matter of the probate of the will of Peter Dill? A. He never entered his appearance as attorney for the executors?

X Q. Mr. Waters as executor, being an attorney, refused to act with you or cooperate with you in the matter of the probate of the will? A. At first he did cooperate; at first, but I found his methods exceedingly crude, and not apt to produce the results we were after, and so as we regarded that he was a mere figurehead in the matter—he was purely an executor—he wasn't the estate, and the complainants were complaining of the non action of Mr. Waters, and we had either to remain identified with Mr. Waters or take him along, and as we could not take him along with us in the fight to the best interests of the parties we represented we dropped him.

300 X Q. So you claim compensation in making up for the inefficiency and non action, and the improper method of conduct in the settlement of the estate on the part of Mr. Waters? A. I haven't said that at all.

Mr. GIES: No, the witness did not state that and I think furthermore the question is improper.

X Q. You have never been paid any part of this alleged fee, nor has Mr. Lewis been paid any part on this alleged fee? A. No we have not been paid anything by any body on account of this estate, or on account of the services that we rendered.

X Q. They never offered to pay you any fee or any part of any fee? A. No, we haven't received it nor has it been offered to us.

Redirect examination.

By Mr. GIES:

Q. Mr. Adriaans, is there anything that you wish to say in reply to what Mr. O'Donoghue has asked you? A. I do not recall; it may be that something occurs to you.

Q. I ask if there is anything that occurs to you; I don't recall anything? A. I can't think of anything.

301 Mr. O'DONOGHUE: I think Mr. John Lewis Smith, representing Mr. Lewis who is now dead, had better be consulted as to the matter before we announce the case closed. The death of Mr. Samuel H. Lewis has been suggested to the court, and his executrix Editha A. Lewis has been made a party defendant, and he may wish, on her behalf, to offer some testimony.

Mr. GIES: I desire to announce simply on behalf of the defendant John H. Adriaans, whom I represent, that he has closed his case.

Mr. O'DONOGHUE: I suggest that the examiner notify Mr. John Lewis Smith to that effect if he will.

JOHN H. ADRIAANS.

Subscribed to before me this 31st day of March, A. D. 1910.

C. ELTON JAMES,
Examiner in Chancery.

302 "DEF'T EX. J. H. A. No. 1."

Peter Dill	}	No children.
and Ann McDonald		

Richard McDonald	}	Both living.
Ann Perry		

Jas. McDonald, Volunteer U. S. Army.
Wm. McDonald lives in Balto., Md.

alias Wm. Dill Wm. McDonald and Anna L. Dill	{	Marian.....	19
		Morris.....	7
		John.....	15
		Leo.....	9
		William.....	24
		Bertha Kearney..	—
	{	Edward.....	13

303 "DEF'T EX. J. H. A. No. 2."

Witnesses to Peter Dill's Sanity.

Did not attend }
in last illness. } Dr. Louis Mackall, (31st) ³⁰⁴⁰Dumbarton St.

Call after 5:30.—Dr. Jas. F. R. Appleby O.K. 1430 33rd N. W.

William P. Hanlon O.K.	} WIT- nesses.	{ [1515 35th N.W.]* 1444 32nd St. Cor. 32nd & N, Johnson Coal Y'd.
T. H. Bremmaman O.K.		
Louis B. Du Fief O.K.		

[* Words and figures enclosed in brackets erased in copy.]

Rob't D. Weaver O. K. 2405 32nd N. W.

Henry E. Weaver O. K. 2323 32nd N. W.

2417 Wisconsin Ave.

Wm. M. Weaver O. K. 32nd N. W.

Jno. A. Heenan, Sup't Cemetery Extension of 32nd N. W.

Joseph F. Birch (Undertaker), M St. N. W.

Frank Tennyson O.K. New Cut Road op. House of
Good Shepherd.

Phillip T. Hall O. K. 908 F St. N. W.

Theo. Barnes, # 2433 32nd N. W.

87 feeble [Henry Kenley,]* 37 st. near Md. H. School.

John Knott, " " 32nd N. W.

Wm. F. }
Benj. P. } Hunt, 3208 Wisconsin Ave. 32nd N.W.

Jos. R. Freeman (florist), 2309 32nd N. W.

Mrs. Wm. Eckloff, 2413 32nd N. W.

Mrs. Annie Dill (Balto.).

Wm. H. Fisher (dyer) 1346 U St., near 14th N. W.

O. K. Fred W. Storch (War Dep't), 3326 P N. W.

Louis Beyer, 2258 Brightwood Ave.

304

Potomac
Lodge
No. 5.

{ Wm. S. Wadley, 3309 Prospect Ave. N. W.

{ Edgar J. Hulse, 1715 35th N. W.

{ Frank Thomas, 3124 P N. W.

Wm. R. Singleton.

Chas. Becker, Paint store, 32nd near Prospect.

Mrs. Eliz. Homiller O.K. About 2530-32nd St.

Trangott E. G. Rosenbusch, 3336 P St. N. W.

305

"DEF'T EX. J. H. A. No. 4."

Mr. Albrittain, Dep't Cl'k.

Circuit Court for Charles County.

B. G. Stonestreet, Clerk.

Geo. C. Merrick, Judge, C't Judge, Upper Marlboro, Md.

LA PLATA, MD., ———, 189—.

In the Circuit Court for Chas. Co., in the State of Md.

MARGARET THALHEIMER & JOS. THALHEIMER, Her Husband; ELIZ.
Raum & Geo. F. Raum, Her Husband; Eva. K. Kraft, Widow,
and Mary Ann Freund

vs.

ELIZ. ESSIG, PETER PFEIFFER, EDW. DILL, & JOS. J. WATERS.

To the Honorable the Judges of said Court:

Your Oratrices complaining, say:

First. That a certain Peter Dill, late of the City of Washington,
in the Dist. of Columbia, died on or about the 18th of Dec., 1897,

seized possessed of a large & valuable tract of land situate in Charles Co., in the State of Md., containing about 386 A., being parts of the tracts known as "Beelen Enlarged," "Dover" & "Leeckey" which was granted & conveyed to said Peter Dill from R. P. Jackson and Joseph J. Waters, Trustees, dated Sept. 26th, 1888, & recorded among the land records of said County in Liber J. S. T. No. 2 folio 319 &c., which property is also known as "Lower
306 Cedar Point" this being the only real estate owned by said Peter Dill so far as yr. Oratrices are informed & believe, within the State of Maryland.

Second. That said Peter Dill left surviving him a wife Ann Dill, now a resident of the City of Washn., D. C., but left no child, children or descendants surviving him.

Third. That yr. Oratrices, Margaret Thalheimer, Elizabeth Raum Eva K. Kraft, all of whom are residents of the City of Baltimore, in the State of Md., and Mary Ann Freund, who resides in the State of Iowa, are all sisters of the said Peter Dill, and together with a certain Edw. Dill, a brother of said Peter Dill, who resides in the State of Penna., and Elizabeth Essig residing in Washn., D. C., & Peter Pfeiffer, who resides in the State of Nebraska, children of a deceased sister of said Peter Dill, are his only heirs at law.

Fourth. That a paper writing purporting to be the last Will & Testament of said Peter Dill has been filed in the Office of the Register of Wills in the City of Washn., but has never been probated, & a caveat has been filed thereto, & no attempt has been made to probate said Will or to take any further action in reference thereto except by filing the same, & yr. Oratrices believe & charge that said Will is not the Last Will & Testament of said Peter Dill, & expect to be able to show the same, & further, that if said paper writing was actually made & published by said Peter Dill as and for his Last Will & Testatment yr. Oratrices charge that said Will is utterly void & uncertain & of no validity whatsoever.

Fifth. That said Real Estate is now in possession of a tenant who occupied the same as the tenant of said Peter Dill during
307 his lifetime at an annual rent of about 700 — per annum & yr. Oratrices are advised that a certain Joseph J. Waters, claiming to be named in said paper writing as the Executor of said Peter Dill has assumed to collect said rent & to deal with said property as if he were the proper & authorized representative of the estate of said Peter Dill which yr. Oratrices charge he is not, & is in no way interested in said estate, & is not authorized to collect or receive any rents or assume any authority over said property.

Sixth. Yr. Oratrices charge that in consequence of the assumption of authority by said Jos. J. Waters, as above alleged, & the claims of yr. Oratrices as heirs at law & next of kin of said Peter Dill, there is a conflict as to who is entitled to receive said rent & to take charge of said property. That it is therefore necessary that a Receiver or Receivers should be appointed to take charge of said property collect the rent & preserve & protect the rights of all parties in interest bending the determination of the question of the validity or invalidity of the said alleged Will of said Peter Dill.

Seventh. To the end therefore, That a Receiver or Receivers should be appointed to take charge of, & protect the said property & collect said rents & that yr. Oratrices may have such other & further relief as their case may require, May it please your Honors to order notice to be given to said Edward Dill, Elizabeth Essig, Peter Pfeiffer & Jos. J. Waters, by publication as required by law, notifying them, & each of them to appear in this Honorable Court on some day to be named in said notice, to answer the facts above set forth, &
 308 to abide & perform such decree as may be passed in the premises

her
 MARGARET x THALHEIMER.
 mark.
 JOSEPH THALHEIMER.
 ELIZABETH RAUM.
 GEORGE F. RAUM.
 EVA K. KRAFT.

JAS. McCOLGAN,
 CHAS. H. KELLY,
Solicitors.

STATE OF MD.,
City of Balto., To wit:

I hereby certify that on this 21st day of March 1898 before the subscriber a Justice of the Peace of the State of Md. in & for Baltimore City aforesaid personally appeared Margaret Thalheimer, one of the above mentioned complainants & made oath in due form of law that the facts stated in foregoing Bill of Complaint are true to the best of her knowledge & belief.

LUDWIG F. LARSEN, J. P.

309

"DEF'T EX. J. H. A. No. 5."

In the Circuit Court for Charles County, Maryland.

No. 912. Equity.

MARGARET THALLHEIMER et al.

vs.

ELIZABETH ESSIG et al.

Answer of Ann Dill, Defendant.

1. Now comes the defendant Ann Dill, widow and devisee of said Peter Dill, and in answer to the first paragraph of said bill says that she admits the same to be true.

2. This defendant also admits the second paragraph of said bill.

3. This defendant neither admits nor denies the allegation of relationship of the parties to this suit, other than herself, to the decedent; and calls for strict proof thereof.

4. This defendant admits that a paper writing has been filed in the Office of the Register of Wills in the District of Columbia, purporting to be the last Will and Testament of said Peter Dill; but denies that no attempt has been made to probate the same; on the contrary, she alleges that the only obstacle to probating said Will, is a Caveat filed thereto by some of the parties to this suit, and issues have been framed thereon for transmission to, and answer by, a jury. Pending said Caveat, under the law in force in said District, the said Will could not be admitted to probate. This defendant denies that the said Will was not the last Will and Testament of said Peter Dill, or that the same was obtained by undue influence
310 exercised by any person; and says that the said Peter Dill executed said Will voluntarily, and was then and thereafter of a sound and disposing mind. This defendant further says that the determination on said Issues should be conclusive on all the parties to this suit.

5. This defendant denies that the complainants have any just cause to call her to account for her management of said Estate, and denies hereby their right to do so, or that they have any interest whatever therein.

6. This defendant denies that any proper occasion exists for the appointment of a receiver; or that such receiver, if already appointed, should continue in office.

7. This defendant denies that said complainants are entitled to the relief prayed, or to any form of relief whatever. And having thus fully answered said bill, she prays to be hence dismissed with her reasonable costs in that behalf sustained.

I do solemnly swear that I have read the answer by me subscribed and know the contents thereof; that the facts therein stated as of my personal knowledge are true; and those stated upon information and belief, I believe to be true. .

Append Clerk's Certificate of Notarial Character.

Sworn to and subscribed before me, this — day of November, 1898.

_____,
Notary Public, D. C.

313

"DEF'T EX. J. II. A. No. 6."

In the Circuit Court of Charles County, Maryland, Holding a Term
for Equity Business.

No. 912. Equity.

MARGARET THALHEIMER et al.

vs.

ELIZABETH ESSIG et al.

The petition of Ann Dill for leave to intervene herein sets forth.

1st. That she is a citizen of the United States resident in the District of Columbia.

2nd. That she is the widow of one Peter Dill who died on the 18th day of December, 1897, in said District of Columbia.

3rd. That the said Peter Dill on the 13th day of February, 1896, signed, sealed, published and declared as and for his last Will and Testament a paper writing, thereafter—to-wit: on the 2nd day of April, 1898—offered for probate in the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court Business.

4th. That by said paper writing the petitioner was named as life tenant of all property whereof said Peter Dill died seized and possessed; and petitioner says that said Peter Dill was of a sound and disposing mind at the time of the execution of said Will.

5th. That some of the parties to this cause have filed a Caveat to said Will in said Court on the 4th of March, and 29th of April, 1898, but took no steps thereafter to an adjudication of the Issues so presented; and on the 16th day of September, 1898, said

314 Court signed a conditional order dismissing said Caveat.

6th. Petitioner says that upon this showing herself, and the other devisees named in said Will are entitled to be, and of right should be, parties to this suit.

Wherefore the premises considered, petitioner prays that she may be permitted specially to appear herein, and for such other and further relief as the nature of the case may require or to this Court shall seem just.

I do solemnly swear that I have read the petition by me subscribed and know the contents thereof; that the facts therein stated as of my personal knowledge are true; and those stated upon information and belief, I believe to be true.

Sworn to and subscribed before me this — day of September, 1898.

Notary Public.

315

"DEF'T'- EX. J. H. A. No. 7."

Postal Card—One Cent.
United States of America.

Station A.
Aug. 31.
6—P. M.

This side is for the address only.

Washington, D. C.
Aug. 31.
9—M.
1898.

Mr. Samuel H. Lewis,
Central—National Bank Building,
Washington,
D. C.

(On back:)

(Stamp not legible.)

W. WASHINGTON, D. C., *August 31st*, 1898.

Mr. S. H. Lewis.

DEAR SIR: My son's address is Wm. H. Dill 1330 Aisquith street Balto. Md. if you send the papers over the children will sign before witnesses over there for it is impossible to go just now.

MRS. ANN DILL.

316

"DEF'T EX. J. H. A. No. 8."

4/22/1900.

Mr. Samuel H. Lewis.

DEAR SIR: In reply to your letter on the 20th concerning the will case in which my children are interested in, I am a poor widow and have no money for car fare, I would be very grateful to you if you write me and let me know how Mrs. Dill and my children stand in this case as I have been kept in total ignorance, I have four minor children. You will kindly oblige me by addressing

MRS. ANNIE DILL,
1628 *Oliver St.*, *Baltimore City*.

317

"DEF'T-' EX. J. H. A. No. 9."

Baltimore,
Md.
Apr. 22 12 P. M. '00.

2c. U. S.
Postage
Stamp.

Mr. Samuel H. Lewis,
Attorney at Law,
Central—National—Bank—Building,
Washington,
D. C.

(On back:)

Washington,
Apr. 23,
5- M.
1900.
D. C.

318

"DEF'T- EX. J. H. A. No. 10."

Judge's Room.

UPPER MARLBORO, MD., *Sep. 19th*, 1898.

John H. Adriaans, Esq.

DEAR SIR: Your favor of the 17th is at hand I leave tomorrow morning to attend Court in St. Mary's County, at Leonardtown—I will be gone all the week—Our term begins here 1st Monday October—I do not know from your letter what the character of your motion is—You had better *file your motion in the case & submit it then*, to the Court for action, *as to the fixing a day*. Possibly the matter, upon the Courts being more fully informed, might be heard at some reasonably early day—Is there, local counsel in the case—I make this suggestion because under our equity rules every paper must *be filed* before any action can regularly be taken upon it.

Respectfully,

GEO. C. MERRICK.

319

"DEF'T- EX. J. H. A. No. 11."

James McColgan, Attorney at Law, Room 405 Fidelity Building,
N. W. Cor. Charles and Lexington Sts.

BALTIMORE, *Sept. 30*, 1898.

J. H. Adrians, Esq.

DEAR SIR: I could not make an appointment with you to be at Upper Marlboro any day next week as I will be in Washington on Friday and could not leave my business here two days in the same week. The blanks were therefore filled in for Thursday October 13th 1898. Let me know if you can so arrange that we will have a hearing on 13th of October as I should not like to go to Marlboro and not have our case heard.

Mr. Kelly informed me that you represented Mr. Waters in the Washington matter; if so will you kindly enter your appearance for him.

Very respectfully,

JAMES MCCOLGAN.

320

"DEF'T- EX. J. H. A. No. 12."

James McColgan,
5 days, return to
If not delivered in
Attorney at Law,
Fidelity Building,
Baltimore, Md.

2¢ U. S.
Postage
Stamp.

Baltimore, Md.
Sep. 30 6.30 P. M. '98.

Mr. J. H. Adrians,
494 Louisiana Ave.
Washington, D. C.

(On back:)

Washington, D. C.
Sep. 30
10—PM
1898

321

"DEF'T- EX. J. H. A. No. 13."

Judge's Room.

UPPER MARLBORO, MD., *Oct.* 29, 1898.

Mr. Adriaans.

DEAR SIR: As requested I return to you the papers left with me containing decisions cited—I beg to say I have today sent the papers to Charles Co. with an order making Mrs. Dill party defendant, overruling demurrer, & dismissing the Petition, in toto, concerning receiver.

Most Respt.

G. C. MERRICK.

322

"DEF'T- EX. J. H. A. No. 14."

Union Hotel,
Ed. Dill, Proprietor.

BEDFORD, PA., *Nov.* 5, 1898.

J. H. Adriaans, Esq., Washington, D. C.

DEAR SIR: Enclosed find the signed I do not know Peter Phiffers adres but he has a sister liveing in Washington who can give it to you.

Yours Truly,

ED. DILL,

20—2253A

323

"DEF'T- EX. J. H. A. No. 15."

Union Hotel
Ed. Dill, Proprietor.
Bedford, Pa.

2¢ U. S.
Postage
Stamp

Bedford
Nov
5
12 M
1898
Pa.

J. H. Adriaans Esq
494 Louisiana Ave
Washington
D. C.

324

"DEF'T- EX. J. H. A. No. 16."

Union Hotel
Ed. Dill, Proprietor.

BEDFORD, PA., Nov. 7, 1898.

J. H. Adriaans, Esq., Washington, D. C.

DEAR SIR: Mrs Ann Dill would like to come to Bedford to spend the winter with me I want you to inform me if she will be required to attend to Court at any time during the winter and about what time I will come to Washington to bring her up when she is ready to come answer at once.

Yours truly,

ED DILL.

325

"DEF'T- EX. J. H. A. No. 17."

Union Hotel
Ed. Dill, Proprietor.
Bedford, Pa.

2¢ U. S.
Postage
Stamp

Bedford
Nov
7
10 AM
1898
Pa.

J. H. Adriaans
494 Louisiana Ave
Washington
D. C.

(On back:)

Washington, D. C.
Nov 7
6—PM
1898

326

"DEF'T- EX. J. H. A. No. 18."

Circuit Court
For Charles County.
B. G. Stonestreet, Clerk.

LA PLATA, MD., *Dec. 20"*, 1898.

J. H. Adrians, Esq., Washington, D. C.

DR. SIR: Inclosed please find Deed of Trust from Ann Dill & al
I hereby acknowledge receipt of money order for 3.75 in payment
of Recording & I. R. Stamps. Thanks.

Yrs. & etc.

B. G. STONESTREET, *Clerk.*

327

"DEF'T- EX. J. H. A. No. 19."

Circuit Court
For Charles County.

F. D. Mudd, Clerk.

Warren M. Albrittain,
Chief Deputy.

LA PLATA, MD., *Oct. 12"*, 1909.

Mr. Jno. H. Adrians, Wash., D. C.

DEAR SIR: The Deed of Trust from Ann Dill & al. to Chas. C.
Cole & al. trustees, was mailed you on Dec. 21", 1898.

Very truly yrs.

FRANCIS D. MUDD, *Clerk.*

328

"DEF'T- EX. J. H. A. No. 20."

From
Francis D. Mudd,
Clerk Circuit Court,
For Charles County.
La Plata, Md.

2¢ U. S.
Postage
Stamp

La Plata
Oct
12
4 PM
1909
Md.

Mr. J. H. Adrians,
Atty. at Law,
Washington,
D. C.

(On back:)
Washington, D. C.
Oct 12
8—PM
1909

329

"DEF'T- Ex. J. H. A. No. 21."

Postal Card—One Cent.
United States of America.
This side is for
the address only.

Harris Lot
May
24
1900
Md.

Mr. Samuel H. Lewis,
Attorney-at-Law,
631 Penn. Ave.,
Wash'g., D. C.

(On back:)

HARRIS LOT, MD., 5/24th, 1900.

DEAR SIR: My Aunt Mrs. Ann Dill, is at her home in George-
town D. C. Have forwarded your Letter to her.

Y'rs Resp.

J. R. PERRY.

330

"DEF'T- Ex. J. H. A. No. 22."

HARRIS LOT, April 26th, 1900.

Mr. Samuel H. Lewis.

DEAR SIR: Your letter received, I don't want to be the children's
Guardian, and I am not able to pay the children's fare to Washing-
ton, Please let me know the result, in case, there is no one to pay
for the children, Will the case be put off? If the mother won't
bring the children to Court.

The witness' Mrs. Antonia Hayden

Harris Lot P. O. Md.

Robert Weaver

Dr. Appibel

William Weaver

Henry Weaver

William Hanlyn

Johnson's Clerk, *stund* in the Coal Yard.

Johnson The Executor.

Mr. Waters knows all these people, they are a lots more that I
can't think of. If you want me to come home let me know, I can
come at any time.

Respectfully,

MRS. ANN DILL,
Harris Lot P. O., Chas. Co., Md.

331

"DEF'T- EX. J. H. A. No. 23."

2¢ U. S.
Postage
StampHarris Lot
Apr.
—
1900
Md.Samuel H. Lewis, Att'y,
Central—National—Bank—Building,
Washington,
D. C.

(On back:)

Washington
Apr. 26
7—M
19 00
D. C.

332

"DEF'T- EX. J. H. A. No. 24."

Postal Card—One Cent.
United States of America.
This side is for
the address only.

(Stamp not legible.)

(Stamp not legible.)

Mr. Samuel H. Lewis,
Attorney at Law,
Central—National—Bank—Building,
Washington,
D. C.

(On back:)

5/20/1900.

Mr. Samuel Lewis.

DEAR SIR: I received your letter this morning, I will let you
know if I can come over when the trial comes up,
Yours Respectfully MRS. ANNIE DILL.

333

"DEF'T EX. J. H. A. No. 26."

BALTIMORE, *June* 1th, 1900.

Mr. Lewis.

DEAR SIR: I send you this paper i hope it will be the last one, for i am tired of running to the attorney. Mr. Waters is offended at me for sending you the papers. he send me the same papers as you did, and as he was so long answering my letter to him, i thought i would have yours filled out and he dosent like it. Mrs. Dill employed you and of course it don't see what i have to do with employing other Lawyers, Mr. Waters will suit himself with out my consent i won't interfere let them all do as they please I told Mr. Waters to fight Mrs. Ann Dill and not me she employed you and send Mr. Adrian to us, and that was all i ever know of the case and i don't care to be worried to death nothing is more worring then trying to please everybody, i said at first i would not have any thing to — with it and now i am all mixed up in it. i don't think there would be mush use in me appealing to more Lawyers, as he dosent seem to think mush of me i won't sent you his cards as i refused to send him yours excuse this writing as i have my children all sick

Yours respectfully

MRS. ANNE L. DILL.

334

"DEF'T EX. J. H. A. No. 27."

Postal Card—One Cent.
United States of America.
This side is for
the address only.

Washington, D. C.
Jun- 28
9:30 PM
Sta. A

Sam. H. Lewis, Esq.
Att'y at Law,
Central Bank Building,
Washington, D. C.

(On back:)

JUNE 28, 1900.

Take notice that I shall ask Judge Cole to act on the Petition and motions of which you were duly served with copies and notice of hearing on 12th this June, will ask him as soon after 1 o'clock tomorrow as we can be heard. If you are not present, we shall endeavor to get a rule issued against you.

J. J. WATERS.

335

"DEF'T EX. J. H. A. No. 28."

Postal Card—One Cent.
 United States of America.
 This side is for
 the address only.

Washington, D. C.
 Jun- 28
 9:30 PM
 Sta. A

John H. Adriaans, Esq.
 Att'y at Law,
 S. E. Corner of La. Ave & 6th St. N. W.
 Washington, D. C.

(On back:)

JUNE 28, 1900.

Take notice that I shall ask Judge Cole to act on the Petition and Motions of which you were duly served with copies and notice of hearing on 12th this June, will ask him as soon after 1 o'clock tomorrow as we can be heard. If you are not present, we shall endeavor to get a rule issued against you.

J. J. WATERS.

336

"DEF'T EX. J. H. A. No. 29."

Postal Card—One Cent.
 United States of America.
 This side is for
 the address only.

Washington
 Jul- 12
 Station
 G
 19 00
 D. C.

1 John H. Adriaans, Esq.
 Att'y at Law,
 Corner of La. Ave & 6th st. N. W.
 City.

Young's Law Building.

(On back:)

In the Supreme Court of the District of Columbia.

No. 8225. Ad. Doc. 24.

Estate of PETER DILL. Orphans' Court Business.

Notice is hereby given that I shall proceed under the order of reference in this cause on Monday, the 16th day of July 1900, at 1 o'clock, P. M., at my office in the United States Court House.

JAS. G. PAYNE, *Auditor*.

337

"DEF'T Ex. J. H. A. No. 30."

Postal Card—One Cent.
United States of America.
This side is for
the address only

Washington
Jul- 24
9:30 P
19 00
D. C.

Station
G

John H. Adriaans
494 Louisiana Ave.

City.

(On back:)

In the Supreme Court of the District of Columbia.

No. 8225. Adm. Doc. —.

In re Estate of PETER DILL.

Notice is hereby given that the report of the Auditor in this cause is ready to be filed.

JAS. G. PAYNE, *Auditor*.

338

Decree.

Filed July 1, 1910.

* * * * *

This cause coming on to be heard upon the pleadings and testimony herein and having been fully argued by Counsel for the respective parties and duly submitted to the Court, it is by the Court, this 1st day of July, 1910, *adjudged, ordered and decreed* that the Deed of Trust from Ann Dill and others to Charles F. Norment and others, Trustees, dated the 30th day of August, 1898, and recorded the 28th day of September, 1900, in Liber 2512, at folio 429 of the Land Records of the District of Columbia, and the Contract for the payment of a fee for legal services, secured by said Deed of Trust, be and the same are hereby declared null and void and of no effect and that said original Deed of Trust and said original Contract be surrendered forthwith by the defendants to the Complainants or their Attorney of Record for cancellation if they should hereafter be found; and it is further *adjudged, ordered and decreed* that Arthur A. Alexander be and he is hereby appointed Trustee with full power and authority to execute and deliver to the Complainants herein a proper and valid Deed of Release of said Deed of Trust from the property therein contained and that the same may be duly recorded in the Recorder of Deeds' Office in the District of Columbia and elsewhere if necessary: and it is further *adjudged, ordered and decreed* that the real estate, land and premises referred to in the original Bill

of Complaint, filed herein, and embraced in said Deed of
 339 Trust be and it is hereby released and fully discharged from
 the effects and control of said Deed of Trust and the Con-
 tract secured thereby as though said Deed of Trust and said Contract
 had not been made or executed; and it is further *ordered* that the
 costs in this case shall be paid by the defendants John H. Adriaans
 and Editha Lewis, Executrix.

THOS. H. ANDERSON, *Justice*.

From the above decree the defendant, Adriaans, notes an appeal in
 open Court to the Court of Appeals of the District of Columbia; and
 severance is hereby granted him from his co-defendant, & it is
 hereby ordered that the bond for costs on said appeal is fixed at
 \$100.00.

THOS. H. ANDERSON, *Justice*.

Order Allowing Amendment of Decree.

Filed July 7, 1910.

* * * * *

Upon consideration of the motion of the defendant to amend the
 decree passed herein on the 1st day of July, 1910, it is, this 7th day
 of July, A. D., 1910, by the court ordered that the decree passed
 herein on the 1st day of July, 1910 be and the same is hereby
 amended by adding thereto as follows:

340 "That the bond upon appeal to operate as a supersedeas
 of said decree, shall be in the penalty of two thousand dol-
 lars."

By the Court.

WENDELL P. STAFFORD, *Justice*.

Memorandum.

July 22, 1910.—Supersedeas Bond \$2000 approved and filed.

Appellant's Designation of Transcript of Record.

Filed August 2, 1910.

* * * * *

The Clerk of said Court will please prepare a transcript of the
 record herein consisting of:

1. Original bill, and exhibits hereto filed Nov. 27, '08.
2. Answer of defendant Adriaans, filed Apr. 21, 1909.
3. Answer of defendant Lewis, filed July 1, 1909.
4. Replication, filed July 2, 1909.
5. Depositions on behalf of plaintiff- filed Nov. 3, 1909.

341 6. Suggestion of death of defendant Lewis, filed Nov. 10, '09.

7. Answer of Editha C. Lewis, Ex. filed Feb. 7, 1910.

8. Replication filed Feb. 7, 1910.

9. Depositions on behalf of defendant- filed Apr. 4, 1910.

10. Decree filed July 1, 1910.

11. Opinion of the Court.

12. Bond filed.

13. Order for transcript of record, filed.

E. L. GIES,
By T. L. JEFFORDS,
Attorney for Appellant.

Service of copy of above designation of record accepted.

DANIEL W. O'DONOGHUE,
Attorney for Appellees.

August 2nd, 1910.

Memoranda.

September 1, 1910.—Time in which to file transcript of record in Court of Appeals extended until October 31st, 1910.

October 27, 1910.—Time in which to file transcript of record in Court of Appeals further extended to December 1st, 1910, inclusive.

342

Subpœna to Answer.

Issued November 27, 1908.

* * * * *

The President of the United States to John H. Adriaans, Samuel H. Lewis, Clarence F. Normont, Trustee, Defendants:

You are hereby commanded to appear in this Court, at its first Special Term, occurring ten days after service of this subpœna, exclusive of Sundays and legal holidays, and answer the exigency of the original Bill, under pain of attachment, and such other process of contempt as the Court shall award.

Witness, the Honorable Harry M. Clabaugh, Chief Justice of said Court, the 27th day of November, A. D. 1908.

[SEAL.]

JOHN R. YOUNG, *Clerk*,
By F. E. CUNNINGHAM,
Assistant Clerk.

MEMORANDUM.—That the defendant, herewith served, is to enter — appearance in this suit, in the Clerk's Office, on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

Marshal's Return.

Summoned defendants as follows:

John H. Adriaans personally Nov. 27, 1908.

Clarence F. Normont trustee personally Nov. 28, 1908.

Samuel H. Lewis not to be found Jan. 5, 1909.

AULICK PALMER, *Marshal.*
H.

343

Order for Appearance.

Filed December 14, 1908.

* * * * *

The Clerk of said Court will enter my appearance for defendant John H. Adriaans.

EDWARD L. GIES,
Solicitor for Deft John H. Adriaans.

Motion for Security for Costs and Affidavit.

Filed December 14, 1908.

* * * * *

Now comes John H. Adriaans one of the defendants in the above entitled cause by his solicitor, and moves the court to pass an order herein requiring the complainants in this cause to give security for all costs and charges that may be adjudged against them or either of them on the final disposition of this cause for the reason that the said complainants are all non-residents of the District of Columbia, as will appear from the bill of complaint filed herein and from the affidavit annexed hereto and filed herewith.

EDWARD L. GIES,
Solicitor for Defendant John H. Adriaans.

344 To Mr. D. W. O'Donoghue, Solicitor for Complainants.

DEAR SIR: Please take notice that I will call the above motion to the attention of the justice of the Supreme Court of the District of Columbia holding the Equity Court, on Friday the 18th day of December, A. D. 1908, at the hour of ten o'clock A. M., or as soon thereafter as counsel can be heard.

EDWARD L. GIES,
Solicitor for Defendant John H. Adriaans.

DISTRICT OF COLUMBIA, ss:

John H. Adriaans, being first duly sworn, deposes and says that he is the John H. Adriaans named as one of the defendants in the

above entitled cause. That the complainants William P. Dill, Marian A. Dill, John H. Dill, J. Edward Dill, Leo A. J. Dill and Maurice E. Dill, as well as Anna L. Dill, who appears in said cause as the guardian and next friend of the two infant complainants, were at the time of the institution of this suit and are now, non-residents of the District of Columbia.

JOHN H. ADRIAANS.

Subscribed and sworn to before me this 14th day of December, A. D. 1908.

J. R. YOUNG, *Clk.*,
By F. E. CUNNINGHAM,
Ass't Clk.

345

Answer of Clarence F. Norment.

Filed January 6, 1909.

* * * * *

For answer unto said bill of Complaint, or unto so much thereof as he is advised it is material and proper for him to make answer. this respondent states and avers as follows:

I, II.

The allegations of the said paragraphs so far as within the knowledge of this respondent, are admitted to be true and the remaining allegations are believed to be true.

III, IV, V.

This respondent has no personal knowledge of the matters set forth in said paragraph, and he therefore neither admits nor denies the same.

VI.

This respondent has no personal knowledge of the matters and things set forth in said paragraph, save and except that he is advised and informed that he was made a trustee with Charles C. Cole, deceased, in a certain deed of trust from Ann Dill, dated
346 August 30, 1898, referred to in the said paragraph.

VII.

This respondent has no personal knowledge of the matters set forth in the said paragraph, and he therefore neither admits nor denies the same.

VIII.

This respondent admits that he never accepted or consented to the trust therein mentioned; he admits the execution of the renunciation set forth in said paragraph of the bill, but for greater certainty

refers to the original or the record thereof. He is further advised that it is unnecessary for him to answer that portion of said paragraph, as relates to the title of this respondent under said deed of trust, as the same relates solely to matters of law.

IX, X, XI.

This respondent has no knowledge or interest in the matters and things in said paragraph set forth, and he therefore neither admits nor denies the same.

Further answering the said bill, this respondent says that the use of the name of this respondent in the deed of trust in the bill of complaint set forth, was without his consent or authority; that immediately upon being advised of the same, he made a formal renunciation thereof which was duly filed of record in the office of the Recorder of Deeds of the District of Columbia, as in the bill of complaint set forth. This respondent further states that he has no interest in any of the matters or things in the said bill of
 347 complaint set forth; that if the said renunciation as above set forth has not completely divested him of all title at any time held by him to the said property, he not alone consents to the entry of such an order as will relieve him from all interest thereunder, but prays the court to make such an order as will relieve him entirely of any interest or title that may remain in him.

And having fully answered this respondent prays to be hence dismissed, etc.

CLARENCE F. NORMENT.

BRANDENBURG & BRANDENBURG,
Solicitors for Def't Norment.

DISTRICT OF COLUMBIA, ss:

Clarence F. Norment upon oath says that he has read the foregoing answer by him subscribed and knows the contents thereof; that the facts therein stated upon his personal knowledge are true, and those stated upon information and belief, he believes to be true.

CLARENCE F. NORMENT.

Subscribed and sworn to before me this 5th day of January, 1909.

[SEAL.]

FRANK B. GILMORE,
Notary Public.

348 *Order Overruling Motion for Security for Costs.*

Filed January 15, 1909.

* * * * *

Upon consideration of the motion of the defendant, John H. Adriaans, for security for costs filed herein on December 14th, 1908, the same having been argued by counsel for the respective parties

it is by the Court this 15th day of January 1909, Ordered that said motion be and the same is hereby overruled.

JOB BARNARD, *Justice*.

Affidavit as to Non-Residence of Samuel H. Lewis.

Filed January 15, 1909.

* * * * *

DISTRICT OF COLUMBIA, ss:

I, Daniel W. O'Donoghue, being on oath duly sworn do depose and say that I am the solicitor of record for the complainant- in the above entitled cause; that the defendant, Samuel H. Lewis, is a non-resident of the District of Columbia and has been absent from said District of Columbia for more than a year last past and is now and has been for more than a year last past a resident of Glendale, in the State of Maryland and further affiant says not.

DANIEL W. O'DONOGHUE.

349 Subscribed and sworn to before me this 15th day of January, 1909.

J. R. YOUNG, *Clk*,
By F. E. CUNNINGHAM, *Ass't Clk*.

Order for Publication Against Non-Resident Defendant.

Filed January 15, 1909.

* * * * *

The object of this suit is to declare null and void a Deed of Trust and the contract secured thereby recorded in Liber 2512, Folio 429 of the Land Records of the District of Columbia as a cloud upon the title to parts of lot 251 and 252 in Square 1299 in the city of Washington in the District of Columbia.

On motion of the Complainant it is this 15th day of January, 1909, ordered that the defendant, Samuel H. Lewis cause his appearance to be entered herein on or before the fortieth (40) day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the case will be proceeded as in case of default, provided a copy of this order be published once a week for three successive weeks in the Washington Law Reporter and in the Evening Star before said day.

WRIGHT, *Justice*.

350

Demurrer of John H. Adriaans.

Filed January 20, 1909.

* * * * *

The demurrer of the defendant John H. Adriaans to the bill of complaint in equity exhibited. This defendant by protestation not

confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true in manner and form as the same are therein set forth, doth demur thereto and for causes of demurrer shows: That the said complainants have not in and by their said bill made or stated such a case as doth or ought to entitle them to any such relief as thereby sought or prayed for from or against this defendant. That as will appear from the said bill, the complainants Maurice Dill and Leo Dill and the defendant Clarence F. Normont are not proper or necessary parties to any suit which may be brought against this defendant in this court touching any of the pretended matters of equity charged in said bill.

Wherefore and for divers other errors and imperfections, this defendant demands the judgment of this court whether he shall be compelled to make any further or other answer to the said bill or any of the matters and things therein contained and prays to be hence dismissed with his reasonable costs in this behalf sustained.

EDWARD L. GIES,

Solicitor for Defendant John H. Adriaans.

351 DISTRICT OF COLUMBIA, ss:

I do solemnly swear that the above demurrer is not interposed for delay.

JOHN H. ADRIAANS.

Subscribed and sworn to before me this 20th day of January, A. D. 1909.

J. R. YOUNG, *Clk*,
By F. E. CUNNINGHAM, *Ass't Clk*.

I hereby certify that the above demurrer is in my opinion well founded in law.

EDWARD L. GIES,
Solicitor for Defendant John H. Adriaans.

Affidavit as to Mailing Copy of Publication.

Filed January 25, 1909.

* * * * *

DISTRICT OF COLUMBIA, ss:

I, Daniel W. O'Donoghue, being on oath duly sworn do depose and say that on the 25th day of January 1909, I mailed postpaid a copy of the advertisement which is hereby annexed to Samuel H.

352 Lewis addressed to his last known place of residence to-wit, Glendale, in the State of Maryland, and that I know of no other residence or address of said party after diligent efforts to ascertain the same.

DANIEL W. O'DONOGHUE.

Subscribed and sworn to before me this 25th day of Jan. 1909.

J. R. YOUNG, *Cl'k*,
By F. E. CUNNINGHAM, *Ass't Cl'k*.

D. W. O'Donoghue, Solicitor.

In the Supreme Court of the District of Columbia, Holding an
Equity Term.

No. 28,183. Equity.

WILLIAM P. DILL et al.

v.

JOHN H. ADRIAANS et al.

The object of this suit is to declare null and void a deed of trust and the contract secured thereby, recorded in liber 2512, folio 429, of the land records of the District of Columbia, as a cloud upon the title to parts of lot 251 and 252 in square 1299, in the city of Washington, in the District of Columbia. On motion of the complainant it is, this 15th day of January, 1909, ordered that the defendant, Samuel H. Lewis, cause his appearance to be entered herein on or before the fortieth (40th) day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the case will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The
353 Evening Star before said day.

WRIGHT, *Justice*.

Order for Calendaring Demurrer.

Filed February 13, 1909.

* * * * *

The Clerk of said Court will please calendar for hearing at the next term of court the demurrer of the Defendant John H. Adriaans filed herein.

DANIEL W. O'DONOGHUE,
Attorney for Complainants.

Decree Overruling Demurrer of John H. Adriaans.

Filed April 5, 1909.

* * * * *

This cause coming on to be heard at this term of the court upon the demurrer of John H. Adriaans, defendant, to the original bill and having been fully argued by counsel for the respective parties

and considered by the court, it is by the court this 5th day of April, 1909, adjudged, ordered and decreed that said demurrer be and the same is hereby overruled and that said defendant be and he is hereby required to answer said bill within fifteen days from the date hereof.

JOB BARNARD, *Justice.*

354

Order for Appearance.

Filed April 6, 1909.

* * * * *

The Clerk of said Court will enter our appearance for defendant Samuel H. Lewis.

J. B. ARCHER, JR.,
JNO. LEWIS SMITH,
Solicitors.

Replication.

Filed April 28, 1909.

* * * * *

The complainants hereby join issue upon the answers of Clarence F. Norment, Trustee, and John H. Adriaans, filed herein.

DANIEL W. O'DONOGHUE,
Solicitor for Complainants.

Proof of Publication in The Evening Star.

Filed September 27, 1909.

CITY OF WASHINGTON,
District of Columbia, ss:

Personally appeared before me, Jay B. Smith, a Notary Public in and for the City and District aforesaid, J. Whit. Herron, 355 who, being duly sworn according to law, on oath says that he is the Agent and Business Manager of The Evening Star, a daily newspaper Published in this City of Washington, District of Columbia, and that the advertisement, of which the annexed is a true copy, was published in said newspaper 3 times, on the following dates: Jan. 18, 25, Feb'y 1st, 1909, at a cost of Six & 60/100 (6.60) Dollars.

J. WHIT. HERRON.

Sworn to and subscribed before me this sixth day of Feb'y, A. D. one thousand nine hundred and nine.

[SEAL.]

JAY B. SMITH,
Notary Public.

In the Supreme Court of the District of Columbia, Holding an Equity Term.

No. 28183. Equity.

WILLIAM P. DILL et al.

vs.

JOHN H. ADRIAANS et al.

The object of this suit is to declare null and void a deed of trust and the contract secured thereby, recorded in Liber 2512, folio 429, of the land records of the District of Columbia, as a cloud upon the title to parts of lots 251 and 252 in square 1299 in the city of Washington, in the District of Columbia. On motion of the complainant it is this 15th day of January, 1909, Ordered that the defendant, Samuel H. Lewis, cause his appearance to be entered herein on before the fortieth (40) day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the case will be proceeded with as in 356 case of default; provided, a copy of this order be published once a week for three successive weeks in the Washington Law Reporter and in The Evening Star before said day.

WRIGHT, *Justice*.

Proof of Publication in the Washington Law Reporter.

Filed September 27, 1909.

* * * * *

Affidavit.

DISTRICT OF COLUMBIA, *To wit:*

Personally appeared before me, a Notary Public in and for the said District, M. W. Moore, who being duly sworn according to law, on oath says he is the Manager of "The Law Reporter Printing Company," publisher of "The Washington Law Reporter," a weekly newspaper printed and published in the District aforesaid, and that the advertisement of which the annexed is a true copy was published in the regular editions of said weekly newspaper 3 times, on the following dates Jan. 22, 29, Feb. 5, 1909.

M. W. MOORE.

Sworn to and subscribed before me Feb. 12, 1909.

[SEAL.]

ALFRED D. SMITH,
Notary Public, D. C.

357

Copy of Notice.

D. W. O'Donoghue, Solicitor.

In the Supreme Court of the District of Columbia, Holding an
Equity Term.

No. 28183. Equity.

WILLIAM P. DILL et al.

v.

JOHN H. ADRIAANS et al.

The object of this suit is to declare null and void a deed of trust and the contract secured thereby, recorded in liber 2512, folio 429, of the land records of the District of Columbia, as a cloud upon the title to parts of lot 251 and 252 in square 1299, in the city of Washington, in the District of Columbia. On motion of the complainant it is, this 15th day of January, 1909, ordered that the defendant, Samuel H. Lewis, cause his appearance to be entered herein on or before the fortieth (40th) day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order: otherwise the case will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and in The Evening Star before said day.

WRIGHT, *Justice.*

358

Spa. Ad Test.

Issued September 30, 1909.

* * * * *

The President of the United States to Joseph J. Waters, 1222 31st St. N. W.; Clarence F. Normont, 631 Penna. Ave. N. W., Greeting:

You are hereby commanded to appear as witnesses for the Compl'ts before Arthur A. Alexander, Examiner, at Rooms 23 & 24 Century Building, on the 2d day of Octo., 1909, at 1 o'clock P. M., and not depart without leave.

Witness, The Honorable Harry M. Clabaugh, Chief Justice of said Court, this 30th day of Sept., A. D. 1909.

[SEAL.]

JOHN R. YOUNG, *Clerk,*
By F. W. SMITH, *Ass't Clerk.*

Marshal's Return.

Summoned all personally Oct. 1, 1909.

AULICK PALMER, *Marshal.*
S.

359

Spa. Ad Test.

Issued November 2, 1909.

* * * * *

The President of the United States to J. Barton Miller (1621 35th St. N. W.) and William M. Weaver (2417 Wisconsin Ave. N. W.), Greeting:

You are hereby commanded to appear as witnesses for the defendant- before C. Elton James, Esq., Examiner, at the office of E. L. Gies, Esq., Warder Bdg., 9th & F Sts. N. W., on the 8th day of November, 1909, at 3 o'clock P. M., and not depart without leave.

Witness, The Honorable Harry M. Clabaugh, Chief Justice of said Court, this 2d day of Nov., A. D. 1909.

[SEAL.]

JOHN R. YOUNG, *Clerk*,
By F. E. CUNNINGHAM,
Ass't Clerk.

Marshal's Return.

Summoned J. Barton Miller and William M. Weaver personally Nov. 5, 1909.

AULICK PALMER, *Marshal*.
H.

360

Order for Appearance.

Filed January 7, 1910.

* * * * *

The Clerk of said Court will enter our appearance for defendant Editha C. Lewis, Executrix of estate of Sam'l H. Lewis, deceased.

ARCHER & SMITH,
Solicitors.

Motion for Granting of Leave to File Cross-Bill and Notice.

Filed February 19, 1910.

* * * * *

Now comes the defendant Adriaans and moves the Court to grant him leave to file a Cross Bill herein; and to serve process thereon by substituted service on the resident counsel of the non-resident defendants to said cross-bill.

EDWARD L. GIES,
Attorney for J. H. Adriaans.

To Messrs. D. W. O'Donoghue and Archer and Smith, Att'ys for defendants to Cross-bill:

Take notice hereby that the above motion will be placed upon the Motion Calendar of the Equity Court to be heard on the
 361 25th day of February, 1910, at ten A. M., or as soon thereafter as the same can be heard.

EDWARD L. GIES,
Attorney for J. H. Adriaans.

Order Overruling Motion to File Cross-Bill, &c.

Filed February 28, 1910.

* * * * *

Upon consideration of the motion of the defendant John H. Adriaans for leave to file in this cause his cross-bill, it is, this 28th day of February, A. D. 1910, ordered by the court that the said motion be and the same hereby is overruled as having been prematurely made, with the right reserved to the said defendant to renew the said motion at the final hearing of this cause.

By the Court:

THOS. H. ANDERSON, *Justice.*

Order for Calendaring Cause.

Filed March 24, 1910.

* * * * *

The Clerk of said Court will please calendar said cause for hearing at the next term of court.

DANIEL W. O'DONOGHUE,
Attorney for Pl'fs.

362

Motion to Amend Decree.

Filed July 7, 1910.

* * * * *

Now comes the defendant Adriaans and moves the Court to amend the Decree passed herein on the 1st day of July, 1910, by adding thereto the amount of penalty of a bond, to operate as a Supersedeas, on the appeal reserved to the Court of Appeals.

EDWARD L. GIES,
Attorney for Defendant Adriaans.

To D. W. O'Donoghue, Attorney for Plaintiffs:

Take notice hereby that on Thursday, the 7th day of July, 1910, at ten A. M., or as soon thereafter as I can be heard I will present above motion to the Justice holding the Equity Court for action.

EDWARD L. GIES,
Attorney for Defendant Adriaans.

Received copy of above motion.

DANIEL W. O'DONOGHUE,
By A. D. ESHER.

July 2, '10.

363

Notice of Surety on Appellant's Bond.

Filed July 7, 1910.

* * * * *

To Mr. Daniel W. O'Donoghue, Attorney for Plaintiffs:

Take notice hereby that on Monday, the 11th day of July, 1910, at ten o'clock, A. M., or as soon thereafter as I can be heard, I shall offer as surety on appellant's bond, Frank T. Knight, whose residence is 1441 D Street S. E., Washington, D. C.

EDWARD L. GIES,
Attorney for Defendant Adriaans.

Service of copy of the above acknowledged this 7th day of July, A. D. 1910.

D. W. O'DONOGHUE,
Per A. A. A.

Notice of Surety on Supersedeas Bond.

Filed July 22, 1910.

* * * * *

To D. W. O'Donoghue, Esq., Attorney for Plaintiffs:

Take notice hereby that on Friday, the 22nd day of July, 1910, at ten o'clock, A. M., or as soon thereafter as I can be heard
364 I will present as surety on appellant Adriaans' bond, United Surety Company, whose place of business is #1325 F Street, N. W., Washington, D. C.

E. L. GIES,
By T. L. JEFFORDS,
Attorney for Defendant Adriaans.

Service of Copy ackn. July 19, 1910.

D. W. O'DONOGHUE,
Per A. A. A.

Objection to Approval of Bond.

Filed July 22, 1910.

* * * * *

And now come all of the plaintiffs in the above entitled cause, by their attorney, and object to the approval by the Court of the bond

herein tendered for approval, this day, on appeal, with the United Surety Company as surety, for the reason that the notice served on the attorney for the plaintiffs on July 19, 1910, is defective and irregular in that said notice does not "contain" "the name and address of the resident agent of such corporation", the United Surety Company, as required by Sec. 1 of Rule 7 of this Court.

DANIEL W. O'DONOGHUE,
Per A.,
Attorney for Plaintiffs.

365 *Appellees' Designation of Transcript of Record.*

Filed August 6, 1910.

* * * * *

The Clerk of the Court, in preparing the transcript of record on appeal to the Court of Appeals of the District of Columbia, will please incorporate in the same, in addition to the appellant's designation of transcript of record, all the record and proceedings in the case omitted in appellant's said designation; as the appellees, through their attorney, hereby designate for the transcript of record on appeal *the entire record and proceedings* in the above entitled case, including all exhibits offered in evidence including the entire record and proceedings in the probate case in reference to the estate of Peter Dill, deceased, the same being Adm. No. 8225 in the Probate Court of the Supreme Court of the District of Columbia, (the entire record and proceedings in said Probate case having been offered in evidence in this above entitled case); and also this præcipe.

DANIEL W. O'DONOGHUE,
Attorney for Appellees, William P. Dill et als.

Service of copy acknowledged this 6th day of August, A. D. 1910.

E. L. GIES,
Per J. H. A.,
Attorney for Appellant.

366 *Memorandum.*

The Clerk of the Supreme Court of the District of Columbia is not custodian of the files and records of the Probate Court.
(See Section 120, Code, D. C.)

367 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 366, both inclusive, to be a true and correct transcript of the record

according to directions of counsel herein filed, copies of which are made part of this transcript, in Equity Cause No. 28183, wherein William P. Dill, et als. are Complainants and John H. Adriaans, et als. are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 5th day of November, 1910.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk*.

Endorsed on cover: District of Columbia Supreme Court. No. 2253. John H. Adriaans, appellant, vs. William P. Dill et al. Court of Appeals, District of Columbia. Filed Dec. 1, 1910. Henry W. Hodges, clerk.

FEB. -9--1911

Henry W. Hodges.

**In the Court of Appeals of the District
of Columbia.**

JOHN H. ADRIAANS, *Appellant*,
vs.
WILLIAM P. DILL ET AL, *Appellees.* } No. 2253.

BRIEF FOR APPELLANT.

EDWARD L. GIES,
TRACY L. JEFFORDS,
Attorneys for Appellant.

In the Court of Appeals of the District of Columbia.

JOHN H. ADRIAANS, <i>Appellant</i> ,	}	No. 2253.
<i>vs.</i>		
WILLIAM P. DILL, ET AL, <i>Appellees</i> .		

Brief for Appellant.

STATEMENT OF THE CASE.

One Peter Dill married a widow named Ann Mc. Donald, her maiden name being Perry. Her first husband was Richard Mc. Donald, by whom she had a son William. The latter had children, and the intimacy between these children and Peter Dill grew to such degree that they changed their names to Dill from Mc. Donald, and he named them as remaindermen in fee in a Will dated February 13, 1896. Peter Dill died December 18, 1897, without issue, and said Will was filed February 24, 1898. It operated to transfer to Ann Dill for life, with remainder in fee to William P. Dill, Marian A. Dill, John H. Dill, J. Edward Dill, Leo. A. J. Dill, and Maurice E. Dill—being the children of the said William Mc. Donald—real estate whereof said Peter Dill died seized and possessed, located in the District of Columbia and in Charles County, Md., besides personalty. A caveat was interposed to said Will on March 4, 1898, by Margaret Thalheimer *et al*, being the next of kin of said Peter Dill, making the usual allegations of testamentary incapacity and undue influence. A petition was filed April 2, 1898, by Joseph J. Waters and Oliver P. Johnson, as the Executors named in said Will, praying probate.

thereof. On the same day the next of kin answered said petition by renewing the charges of undue influence, etc. Replication was filed May 19, 1898. No further step was then taken by the Executors to frame and try the Issues thus raised. The beneficiaries of said Will, restive under the inactivity of said Executors, sought counsel to expedite the adjudication of said Issues. They employed Samuel H. Lewis and John H. Adriaans as attorneys to procure the defeat of said caveat and probate of said Will. The beneficiaries being unable to pay said attorneys in cash for the services contemplated to be performed, agreed by contract in writing to compensate them, and secured said contract by giving a lien on the realty of said Estate in the form of a deed of trust. Three papers were signed on the same occasion, August 30, 1898, by Ann Dill, and September 2, 1898, by appellees. The papers were a power of attorney (Rec. p. 81); a contract (Rec. p. 87); and a deed of trust to secure said contract (Rec. p. 11). Appellant filed a motion, on September 6, 1898, to dismiss said caveat for lack of prosecution (in Adm. No. 8,225, Estate of Peter Dill). On September 16, 1898, the Court issued an order *nisi* on this motion. On September 23, 1898, Margaret Thalheimer *et al* filed a petition on the subject of the caveat; to which answer was made on the same day. Thereupon the Court passed an order on October 7, 1898, directing caveators to submit issues. Proposed issues were filed October 14, 1898. On the same day a supplemental petition for probate was filed; and summons to answer this petition was issued against the heirs at law on the same day. The summons being returned *non cst*, an order of publication was passed. On December 2, 1898, a caveat was again filed by Margaret Thalheimer *et al*, as next of kin. On December 9, 1898, the order was passed framing issues. On April 29, 1899, an order was passed transmitting the issues to the Circuit Court for trial. On May 22, 1899, a motion was filed to dismiss the caveat. On October 12, 1899, a motion was filed to fix the date of trial of the issues. An order was passed February 23, 1900, fixing trial of issues for April 4, 1900. On April 5, 1900, an order was passed altering the date of trial to May 17, 1900. On May 15, 1900, a petition was filed by the minor appellees for the appointment of a guardian *ad litem*. On the same day the Court appointed as such Annie L. Dill, their mother, and her answer was filed the same day. On May 18, 1900, the Executors filed a petition, without notice to Lewis and Adriaans, for leave to employ counsel to defend the Will, and obtained an order to that effect on the

same day. A formal appearance was thereupon entered by Lewis and Adriaans, on May 23, 1900, for the beneficiaries under the Will. A power of attorney from Annie L. Dill, guardian *ad litem*, to Lewis and Adriaans, was filed June 2, 1900 (Rec. p. 89). On June 6, 1900, a motion was filed, on behalf of the beneficiaries to the Will, to vacate the order of May 18, 1900, permitting the Executors to employ counsel. On June 23, 1900, an order was passed authorizing caveators to employ new counsel, and setting the issues for trial on June 23, 1900. On July 13, 1900, an order was passed directing caveators to employ new counsel, in substitution for deceased counsel. On September 24 and 28, 1900, the Will was proved by the witnesses thereto. On September 28, 1900, the proof of publication was filed of the order *nisi* of July 13, 1900, and the caveators having substituted no new counsel, and being in default under said order, the Will was admitted to probate and record by a final decree procured by Lewis and Adriaans on September 28, 1900. The Executors refused to qualify under this decree and citations as to qualification were issued against them June 26, 1901, and October 12, 1901. On November 15, 1901, the Executors answered the rule; filed on the same day, without notice to Lewis and Adriaans, a petition to vacate the final decree of September 28, 1900, and obtained *ex parte* on the same day an order of Court purporting to vacate said final decree. The Executors then obtained an order on December 5, 1900, setting the issues for trial on December 16, 1901. On December 18, 1901, the date of trial of issues was altered to January 16, 1902, and notice by publication was directed to be given to caveators. On December 21, 1901, S. H. Lewis filed an affidavit, in response to the petition of Joseph J. Waters, Ex. filed November 15, 1901; and on January 9, 1902, an answer to the same petition was filed on behalf of devisees; and motion was made to vacate the order of November 15, 1901, which was overruled by the same Court that passed the order objected to. On January 16, 1902, motion was made on behalf of devisees to vacate the order of December 18, 1901, setting issues for trial. On January 16, 1902, Ann Dill, and appellees, filed three petitions for jury trial without interference. On the same day a jury was sworn to try the issues and under the direction of the Court (who passed the order of November 15, 1901), brought in a verdict sustaining the Will—the caveators being unrepresented. On January 24, 1902, the Court of Appeals (Clark *vs.* U. S. 19, App. C. 295), held that juries empaneled before the Code, could not sit in cases after the

Code went into effect; and the jury that rendered this verdict came within that ruling. On February 5, 1902, a final decree was entered on the verdict admitting the Will to Probate and record, and the Executors qualified thereunder on October 27, 1902; and letters thereupon issued to them *c. t. a.* On October 28, 1902, notice was given to creditors. On March 20, 1903, Lewis and Adriaans filed their claim with the Executors for compensation, under the contract of August 30, 1898; and filed notice of claim also in the cause (Adm. 8225).

On obtaining the final decree of September 28, 1900, Lewis and Adriaans, being of opinion that they had performed their part of the contract of August 30, 1898, to such degree that they were entitled to the compensation therein promised, caused the deed of trust (Rec. p. 11) to be recorded on the same day in Liber 2512, Folio 429 *et seq.* of the Land Records, D. C. J. J. Waters thereupon procured the trustees, named in said Trust, to file declinations to serve, recorded severally on the 4th of October, 1900, in Liber 2530, Folio 17 *et seq.* and on the 31st of October, 1900, in liber 2537, Folio 86 *et seq.*, and thereupon Lewis and Adriaans filed, on November 21, 1900 a bill in Equity, No. 21,889 (still pending) to substitute new trustees. On the 27th of November, 1908, appellees filed a bill in Equity, No. 28,183, seeking the cancellation of the contract and deed of trust executed by them August 30, 1898, and obtained a final decree, granting their prayers, on the 1st of July, 1910; and the present appeal seeks the reversal of said decree, for the causes hereinafter specified.

Assignment of Errors.

1. The Court below, by its final decree, erred in annulling the contract entered into, in good faith, between appellant and Lewis on one side; and appellees on the other side, after the performance thereof by appellant, as disclosed in the record.

2. The Court below erred in vacating the deed of trust given by appellees, to secure to appellant performance by appellees of their part of the contract.

3. The Court below erred in deciding that said contract was procured by fraud and misrepresentation as an inducement to the execution thereof when the record furnished no basis for such finding—thus impairing the obligation of the contract.

4. The Court below erred in deciding that a contract for compensation for legal services rendered to infants, in a

cause whereto they are parties, is not binding upon them; and may be disaffirmed unconditionally.

5. The Court below erred in holding that a contract for legal services entered into by infants with the assent of their parents, and executed in good faith by the other contracting party, could be disaffirmed without doing equity to the other party.

6. The Court below erred in holding that a contract entered into by infants, with the assent of their parents, for legal services to be rendered in a cause whereto they are parties; the form and substance of said contract not differing essentially from those theretofore judicially approved under similar circumstances between adult contracting parties; that such contract, when executed by the other party, was disadvantageous to the infants and could be disaffirmed unconditionally.

7. The Court below erred in deciding that such disaffirmance could occur effectively during the continuance of such infancy.

8. The Court below erred in deciding that disaffirmance by infants of a joint and several contract, whereto an adult was also a party obligor, operated to discharge the adult from liability thereunder.

9. The Court below erred in deciding that the right of disaffirmance could be exercised, during the continuance of infancy, by a third party, as next friend of the infants.

10. The Court below erred in deciding upon the evidence that the legal services rendered by appellant, and for which he seeks compensation, were not beneficial to the infants, thus justifying annulment of the contract therefor; when the evidence established that the services rendered were those contracted for, and were of great value to the infants.

11. The Court below erred in deciding that contemporaneous statements to appellees by appellant, as to the insolvency of their grandmother, constituted fraudulent inducement to the execution by appellees of the contract; when this condition of insolvency was merely a reason for the contract.

12. The Court below erred in holding that a contract for legal services, rendered to infants in a cause whereto they were parties, was not binding upon them, and did not constitute a contract for necessities.

13. The Court below erred in holding that the contemporaneous evidence offered did not tend to show intelligent execution of the contract by appellees, and that their subsequent course did not disclose full appreciation of its terms.

14. The Court below erred in holding that a guardian *ad litem* who employed appellant to perform legal services for her infants was not thereby estopped from filing a bill, as next friend to said infants, to annul a contract for compensation for such services.

15. The Court below erred in refusing to enforce the Statute of Limitations against appellee William P. Dill, an adult at the time of executing the contract (Sept. 1898), and permitting him to maintain a bill filed November 27, 1908); and in holding said Dill was not guilty of gross laches.

16. The Court below erred in refusing to enforce the Statute of Limitations against appellees Marian A. Dill, John H. Dill, and J. Edward Dill, who waited respectively about 7, 5, and 4 years before bringing their bill of disaffirmance; and in holding said parties were not guilty of gross laches.

17. The Court below erred in giving relief upon a bill, where manifest misjoinder of parties plaintiff clearly appeared upon the the record; it being apparent that parties barred by laches were joined with parties to whom a right of action had not yet accrued, and who sued prematurely.

18. The Court below erred in giving relief upon a bill, where misjoinder of parties defendant appeared clearly upon the record, when it was manifest that a person (Norment), against whom no relief was sought or grantable, was yet added as a party defendant.

19. The Court below erred in sustaining the bill, when the evidence offered in support thereof did not overcome the probative force of defendants' answers thereof.

20. The Court below erred in sustaining the Bill, notwithstanding the gross laches of appellees, when the result of the delay in filing the same operated to deprive the Court, and appellant, of the testimony of three witnesses. who had intermediately died, and were familiar with the *res gestae* of the transaction.

Argument.

1. The contractual power of infants has frequently been considered by Courts of various degrees of authority, in scattered localities, and under differing circumstances. Subjoined citations will show the trend of expressed judicial opinion.

“Infant cannot repudiate a bet, after the result of the bet is known.”

McLean *vs.* Wilson, 36 App. C. R. (Ill.), 657.

"Competency of infant to contract considered."

Purviance *vs.* Schultz, 16 Ind. App. C. 94.

"Obligation of infants on contracts considered."

Wilhelm *vs.* Hardman, 13 Md. 140; Vehue *vs.*

Pinkham, 60 Me. 142.

"Infant cannot recover money expended according to his direction."

Welch *vs.* Wlech, 103 Mass. 562.

"Infant may enter into a valid and binding contract with a third person."

R. R. Co. *vs.* Elliott, I. Coldwell (41 Tenn.), 611.

"Infant is bound by his contract for services which he has executed without dissent, and which is not so unreasonable as to show fraud or undue advantage."

Robinson *vs.* Van Fleet, 121 S. W. R. 288.

The rule that an infant may bind himself by his actual fraud, but not by mere conduct or silence when he ought to speak, is an exception to the rule that an infant cannot bind himself by estoppel, and is confined to cases where the infant is in fact developed to the condition of actual discretion, and to cases of actual fraud, and *where the contract or transaction is beneficial*.

Grauman *vs.* Krienitz, 70 Central L. J. 461.

The Courts concur that infants can make binding contracts for their own services to others, as well as for others' services to them; the tests of enforceability being fairness and advantageousness. If the contract at bar was therefore fairly executed by appellant, it was error in the Court below to annul it.

2. As the deed of trust was simply given as security, it would follow that if the annulment of the contract was error, then it was also error to annul the security for the contract.

3. If the record furnishes no proof of fraud and misrepresentations by appellant, and performance in good faith of his contract with appellees, then the annulment of the contract providing for compensation, was a denial of justice amounting to impairing the obligation of the contract.

"Whether it be on a trial by jury or in chancery, fraud in fact must be made out affirmatively by the party who makes the charge."

Birdsall vs. Welch, 6 D. C. 316.

"Where a Court of Equity is asked to set aside a deed on the ground of fraud, and the answer denies all fraud . . . , and in addition the witnesses relied upon by the complainant also deny the alleged fraud, the bill will be dismissed."

Quill vs. Wolfe, 4 Mackey 188.

"To avoid a contract on the ground of false and fraudulent representations, it must be shown that the representation gave occasion to the contract, and that in its absence the contract would not have been entered into."

Inv. Co. vs. Garrett, 3 App. C. 69.

"Fraud is not to be presumed, nor can it be established, except upon clear proof, either circumstantial or direct."

McDaniel vs. Parish, 4 App. C. 213.

"The charges of fraud and undue influence in obtaining the deed failed for lack of any evidence whatever."

Magow vs. Huntley, 38 W. L. R. 810, 812.

4. When an infant sues, or is sued, and in an emergency needs legal services, which are performed in good faith, it is a fraud upon the attorney to permit the infant to repudiate the contract for compensation.

"A minor 19 years of age . . . may lawfully contract for . . . services."

Waugh vs. Emerson, 79 Ala. 295.

"Payment and set-off is a good plea to a suit by infant for services on contract."

Hobbs vs. Goodlove, 17 Ind. 359.

"Payment to a minor is full satisfaction of a contract for his services."

Milling Co. vs. Grant, 68 Kans. 732.

"An infant cannot repudiate an executed contract for services."

Spicer vs. Earl, 41 Mich. 191.

"The right of a solicitor, who has rendered professional services for an infant, to come into the Chancery Court for the ascertainment of his compensation, depends upon his having acquired a lien on property for its payment."

Bowling vs. Scales, 1 Tenn. Ch. 618.

5. An infant who comes into Equity to annul a contract must do so with clean hands, and restore consideration to the other party, as a condition precedent.

"Where an infant seeks to disaffirm her contract, on coming of age, she must return the consideration, if it be in her power."

Utermehle vs. McGreal, 1 App. C. 359.

"The disaffirmance can only be decreed however upon condition complainant repay W. and W. money actually paid to D. upon such payment they should be decreed to reconvey the property to the complainant, who to have equity must do equity."

Godfrey vs. Dutton, 16 App. C. 117, 132.

"Infant must restore consideration on disaffirmance of contract."

Bartholomew vs. Finnemore, 17 Barbour 428.

"Infant's voidable contract can only be repudiated by restoration of benefits derived thereunder."

Heath vs. Stevens, 48 N. H. 251.

"On an executed contract, an infant on coming of age and avoiding must restore the consideration."

Roof vs. Stafford, 7 Cowen 179.

"He who avoids an executed contract on the ground of infancy, must refund the consideration received by him."

Smith vs. Evans, 5 Hump. (Tenn.) 70.

"Where it is sought to set aside a sale of real estate,

on the ground of infancy, there should be an offer to restore the purchase money."

"*Cummings vs. Powell*, 8 Tex. 80.

"Infant must return consideration upon disaffirmance."

Mustard vs. Wohlford, 15 Grattan (Va.) 329.

"Whether a contract is executed or executory, it cannot be avoided by an infant on the ground of infancy, after attaining lawful age, without restoring the consideration."

Bedinger vs. Wharton, 27 Grattan 857.

6. The contract at bar was entered into openly between appellant and appellees, with the assent of both parents of appellees, the father being a witness thereto; it was such as is constantly sustained by the Courts, as between adult contracting parties; was advantageous to appellees and should be enforced by the Court.

"Where a contract was made with an attorney for the prosecution of a claim . . . for a stipulated proportion of the amount recovered and services were rendered, the death of the owner of the claim did not dissolve the contract, but the compensation remained a lien upon the money when recovered.

Wylie vs. Coxe, 15 Howard 415.

"A contract to pay an attorney for his services . . . is not champertous. The attorney's lien was protected."

McPherson vs. Cox, 96 U. S. 404.

"A contract with an attorney to prosecute a claim for a contingent fee is not void."

Taylor vs. Bemiss, 110 U. S. 42; *Mackall vs. Willoughby*, 167 U. S. 681.

"Agreements between attorney and client, fairly made for contingent fees, will be sustained both in law and equity."

Stanton vs. Haskin, 1 McA. 558.

"A contract for a contingent fee for the collection of a claim against U. S., which is otherwise fair upon its face, is not in violation of public policy."

Burbridge vs. Fackler, 2 McA. 407.

"A contract between attorneys and their client that the attorneys shall receive for their services a proportion of the amount recovered in a suit, constitutes a valid lien upon a fund realized from a judgment recovered therein, which lien attaches immediately upon the rendition of the judgment and is superior to all other liens, no matter how created."

Hutchinson vs. Worthington, 7 App. C. 548.

"The relation of debtor and creditor arises between client and attorney when the services of the attorney are contracted for."

Smith vs. Cook, 10 App. C. 487.

"While an agreement to pay a certain percentage of a fund may, under some circumstances, be deemed equivalent to a promise to pay out of the fund, and so create an equitable lien upon the fund in favor of the promisee, it will not be so construed if the situation of the parties and the attendant circumstances show that it was not the intention of the parties that the fund itself should be looked to for security."

De Winter vs. Thomas, 34 App. C. 80.

"Held upon a review of the evidence, that he (the attorney) was entitled to \$12,500, to be first deducted from the \$42,000, and to one-fourth of the balance, or a total of \$19,75.

Maddox vs. Bottineau, 34 App. C. 119.

"Infant was held bound upon contract, made with assent of his father, and found to be beneficial to him."

Breed vs. Judd, 1 Gray (Mass.) 455.

"An agreement with a minor to give him board, clothing and schooling in payment for his labor . . . cannot be repudiated by the minor after it has been executed."

Squier vs. Hydcliff, 9 Mich. 274.

7. While some Courts hold that an infant can disaffirm a deed during minority for fraud, etc., the weight of authority is to the contrary, as appears by subjoined citations, where both views are given. The appellees, Leo A. J. Dill and Maurice

E. Dill, were minors when the bill was filed, and sue by next friend.

"In many cases the disaffirmance of a deed, made during infancy, is a fraud upon the other party. The disaffirmance, according to some authorities, must occur during his nonage or afterwards; and according to others, at all events, after his arrival of age."

Tucker *vs.* Moreland, 10 Peter 58.

"Although it is not necessary to the affirmation of an infant's voidable deed that there be an act of affirmation by him, after he becomes of age . . . still mere acquiescence, without anything else, is not generally sufficient evidence of affirmation."

Irvine *vs.* Irvine, 9 Wall. 617.

"The infant is not estopped . . . from asserting, on arriving at full age or within a reasonable period thereafter, the invalidity of such deed."

McGreat *vs.* Taylor 167 U. S. 688.

"A conveyance of real estate by a minor may be disavowed by him upon his coming of age, and the institution by him of a suit for the cancellation of the conveyance is a sufficient disavowal."

Slater *vs.* Rudderforth, 25 App. C. 497.

"The grantor disavowed the act after he became of age."

Slaughter *vs.* Cunningham, 24 Ala. 260.

"Where an infant has conveyed his or her real estate, such infant cannot disaffirm such conveyance, solely on the ground of infancy, until he or she has arrived at the full and lawful age of 21 years."

Welch *vs.* Bunce, 83 Ind. 382.

"The contract of an infant cannot be avoided or disaffirmed, because of nonage merely, until the infant reaches a majority."

Shroyer *vs.* Pittenger, 31 Ind. App. 158; 67 N. E. R. 475.

"The deed of an infant is not void, but only voidable; and, after attaining majority, he may, at his election, affirm or disaffirm it."

Allen *vs.* Poole, 54 Miss. 323.

"An infant . . . can disaffirm her deed after attaining majority."

French *vs.* McAndrew, 61 Miss. 187.

"A minor *feme covert* may plead infancy, during minority, in a suit to foreclose."

"Schneider *vs.* Staihr, 20 Mo. 269.

"The deed of a minor is . . . voidable after he reaches his majority."

Mfg. Co. *vs.* Lamb, 81 Mo. 221.

"An infant cannot, during his minority, disaffirm his deed merely because of his infancy, nor can he enter upon the land and enjoy its profits."

Shipley *vs.* Bunn, 125 Mo. 445.

"All contracts of an infant, except those for necessities, are voidable by him at his election, made within a reasonable time after he becomes of age."

Englebert *vs.* Troxell, 40 Neb. 195.

"A voidable deed of an infant cannot be avoided by him during his minority."

Emmons *vs.* Murray, 16 N. H. 385.

"A deed of lands executed by an infant cannot be avoided until he comes of age."

Bool *vs.* Mix, 17 Wend. 119.

"An infant who has executed a deed for land, cannot make the deed void or valid by any act of his done while under age."

McCormick *vs.* Leggett, 53 N. C. (8 Jones L.) 425.

8. Where a joint and several contract is executed by an adult and infants, disaffirmance by the latter, though effective, does not discharge the former.

"The several covenant of one grantor . . . is not avoided by the infancy of another who grants in the same deed."

Haw vs. Ogle, 4 Taunton 9.

9. The act of disaffirmance is personal to the infant. The act done, during minority, is not void but voidable; and the infant is placed on election, at attainer of majority, as to whether he will affirm or disaffirm. No person can exercise this election for him. In the case at bar, the mother Annie L. Dill, undertakes to exercise this right of election for appellees, Leo A. J. Dill and Maurice E. Dill, during the continuance of their minority.

“No one can take advantage of the fact of infancy in avoidance of contracts, except the infant himself.”

Hastings vs. Dollarhide, 24 Cal. 195.

“Neither an infant nor his guardian has authority, while the infancy continues, to determine whether a voidable contract of the infant shall be affirmed or annulled; this is a matter for his own decision, when he arrives at mature age.”

Dunton vs. Brown, 31 Mich. 182.

“A conveyance of an infant’s land by her guardian during her minority, cannot amount to a disaffirmance of a prior mortgage by the infant.”

Shreeves vs. Caldwell, 135 Mich. 323.

“The defense of infancy is personal to the infant, and cannot be set up by another.”

Baldwin vs. Rosier, 48 Fed. R. 810.

“Parent cannot bind infant, when suing as next friend.”

R. R. Co. vs. Lasca, 21 L. R. A. 338.

10. The benefits conferred, by the Will of Peter Dill, upon the infants at bar were placed in jeopardy by the Caveat of his next of kin. Had that Caveat prevailed no benefit therefrom would have accrued to the infants; to defeat the Caveat and establish the Will was beneficial to the infants; to accomplish this result the services of an attorney were necessary; the contract at bar is reasonable and advantageous to the infants — there being a double condition to the attorney’s compensation; first, that the Will should be sustained; second, that the Estate could not be liquidated until the youngest

child attained majority. Under such circumstances the law creates a legal obligation upon the infant to pay such attorney's compensation.

"Where an infant is under a legal obligation to do an act he may, in general, bind himself by a contract for its performance, which will be valid, notwithstanding his infancy."

People *vs.* Moores, 4 Denio 518.

11. When appellant informed appellees of the insolvent condition of their grandmother, as a reason for the contract, this was no fraudulent inducement that justified annulment of the contract and trust. If appellees, and their grandmother, had paid appellant in cash, the present situation would not exist.

"When a deed is attacked . . . as fraudulent . . . the complainants must sustain the burden of proof which is upon them by clear and indubitable proof, and not upon presumptions and suspicions."

Droop *vs.* Ridenour, 11 App. C. 224.

12. The proposition that an infant is liable on a contract for necessities, suitable to his station in life, is so firmly established by the consensus of judicial opinion that it may be regarded as axiomatic. The question presented by the case at bar, and negatively decided by the Court below, is whether legal services may be classed as necessities. As appears by citations below, it has been considered by Courts of weight and authority, and the trend of opinion is in the affirmative.

"An infant can bind himself by an agent for necessities, where he could have bound himself directly."

Fruchey *vs.* Eagleson, 15 Ind. App. 88.

"An infant can bind himself by an express contract for necessities."

Stone *vs.* Dennison, 13 Pick. I.

"Where one, who is restrained of his liberty against his will, and without legal process, as an insane person, employs counsel to prosecute a writ of *habeas corpus* . . . the counsel so employed will be entitled to recover

a reasonable compensation for his services, if rendered in good faith."

Hallett *vs.* Oakes, 1 Cushing 296.

"An assignment of wages, based on a contract for necessities, is not void nor voidable by infant's creditors."

McCarthy *vs.* Murray, 3 Gray 578.

"Minor is bound for necessities furnished upon the credit of his expectation of property."

Trainer *vs.* Trumbull, 141 Mass. 527.

"An infant is not generally bound for counsel fees as necessities; but where there is no guardian, the infant's estate is liable for the fees of counsel, whose services contributed to secure it."

Epperson *vs.* Nugent, 57 Miss. 45.

"Held, that the Court did not err in submitting to the jury the question as to whether the services rendered by the attorney (in the *habeas corpus* case) were necessities."

Cobbey *vs.* Buchanan, 48 Neb. 391.

"Services of an attorney, rendered to an infant in a bastardy proceeding, are necessities, for which, if it was reasonable for him to make a defense, he is liable on an implied promise."

Barker *vs.* Hibbard, 54 N. H. 539.

"An express promise need not be proved to render an infant liable for necessities."

Gay *vs.* Ballou, 4 Wend. 403.

"Infant may set off value of services to suit upon contract for necessities."

Francis *vs.* Felmit, 20 N. C. 498.

"The services of an attorney should be held necessary to an infant when he is charged with crime."

Askey *vs.* Williams, 74 Tex. 294.

"Legal services, if beneficial, performed in defense

of a minor, constitute a valuable consideration for a deed, for a reasonable share of land recovered."

Searcy *vs.* Hunter, 81 Tex. 644.

"Under a law, which authorizes a minor to contract for necessities, he may engage an attorney to prosecute an action for a personal injury."

"Hanlon *vs.* Wheeler, 45 S. W. R. 821.

"Services of an attorney in prosecuting for an infant an action for damages . . . are necessities."

Crafts *vs.* Carr, 60 L. R. A. 128.

13. The execution of the contract, by the several parties thereto, occurred at three different times and places. The incidents that occurred at one time and place differ from those occurring at the other places. The contract was signed by Ann Dill, an adult, in the presence of one witness of her selection; the other witness being the Notary. None of the appellees were then present. It was signed by William P. Dill, an adult; none of the other appellees being then present. It was signed on the same day by the other appellees, in the presence of both parents—the father signing as a witness thereto. The contemporaneous and subsequent conduct of appellees tends to show intelligent execution. The evidence in support of, and against, the decree below will be detailed under the 19th assignment of error.

14. Appellant procured the appointment of Annie L. Dill, mother of appellees, as guardian *ad litem* for the infants; received a power of attorney (Rec. p. 89), acknowledged by her before a Notary, directing appellant to represent her, as such guardian, in the further progress of the probate cause. Appellant prepared and filed an answer signed by her, and acted faithfully under the power of attorney. The record discloses that the services contracted for originally, and by the power of attorney, were fully performed by appellant, thus raising an implied obligation to pay for the services so rendered. Does such conduct operate as an estoppel upon said Annie L. Dill, to file the bill at bar, as next friend of such infants?

"A person is estopped to repudiate a contract to which he is a party, where the other parties to it have been induced by his action and conduct to expend money in carrying out the agreement and benefiting him, as well as themselves."

Sanche vs. Electrolibration Co., 4 App. C. 453.

"The grantor was estopped to deny the delivery of the deed."

Carusi vs. Savary, 6 App. C. 330.

"Conduct of party may operate as estoppel."

Cropley vs. Eyster, 9 App. C. 373.

"Court construes equitable estoppel to arise upon facts disclosed by record."

L. Ass. vs. Campbell, 13 App. C. 581.

15. The contract and deed of trust at bar were executed by William P. Dill, in September, 1898, when he was an adult. He filed the Bill to annul the same November 27, 1908. The current of authority is that such delay constitutes gross laches. It is true that it is alleged in the Bill that an attorney named Dumler informed said Dill of the existence of the deed of trust about a year and a half before filing the Bill. Can the Court believe, however, that Joseph J. Waters did not inform said Dill, and his co-appellees, of the existence of this deed in October, 1900, when he procured declinations to act from the two Trustees appointed thereunder? Again about January 16, 1902, when said Dill and his co-appellees signed petitions, prepared by Waters, for jury trial without interference by appellant and Lewis? Waters surely had notice of it in October, 1900; and, he was then, as now, acting as attorney for appellees (*Patten vs. Warner*, 11 App. C. 149). Waters' procurement of declinations to serve from the Trustees, under the deed at bar, was not as Executor of Peter Dill's Estate, but as attorney for appellees (Rec. p. 124).

"In this case the Court holds that the complainant was guilty of laches, and refuses relief on that ground alone."

Richards vs. Mackall, 124 U. S. 183.

"If the acquiescence continues for the period limited by the Statute for the enforcement of the right, it takes away the right of action."

"*Kilbourn vs. Sunderland*, 130 U. S. 505 (Code Sec. 1265).

"Plaintiff furnished no satisfactory explanation of his laches herein."

Mackall *vs.* Casilear, 137 U. S. 556.

"Equity may refuse relief where it is sought after undue and unexplained delay."

Abraham *vs.* Ordway, 158 U. S. 416.

"Courts of Equity withhold relief from those who have delayed the assertion of their claims for an unreasonable time."

Willard *vs.* Wood, 164 U. S. 502; 1 App. C. 44.

"In this case the Court arrives at the conclusion, on the evidence that if the false representations . . . were more than 3 years before the filing of the Bill . . . it debars him from proceeding in a Court of Equity."

Baker *vs.* Cummings, 169 U. S. 189.

"Neither poverty, illiteracy, nor ignorance, nor all of them combined, will avail as an excuse for laches."

Levis *vs.* Kengla, 8 App. C. 230; 169 U. S. 234.

"Courts of Equity discourage a stale demand when the person setting it up has lost his moral right to enforce it."

Gibbons *vs.* Duley, 18 D. C. 320.

"Where in a suit in equity laches are not relied upon as a defense it is discretionary with a Court whether or not to raise the question of laches of its own motion."

Crutchfield *vs.* Hewitt, 2 App. C. 373.

"A person is guilty of laches if possessed of the knowledge of such facts or circumstances as would be sufficient to put an ordinarily prudent person, under similar circumstances and surroundings, upon inquiry."

Murphy *vs.* Kirby, 3 App. C. 207.

"Laches and undue lapse of time constitute a good defense in equity."

Cammack *vs.* Carpenter, 3 App. C. 219.

"Question of laches is to be determined by the cir-

cumstances of each case in which it is raised.”

Nelson *vs.* Worthington, 3 App. C. 503.

“An unexplained delay of 15 years held fatal to a suit.”

Southey *vs.* McIntire, 7 App. C. 447.

16. Courts worthy to be followed have concurred in holding that an infant who seeks to disaffirm a contract, made during minority must do so within a reasonable time after attaining majority. The appellees Marian A. Dill, John H. Dill, and J. Edward Dill waited respectively about 7, 5, and 4 years after attainer of majority, before filing the Bill at bar to disaffirm said contract. Is that period of interval reasonable?

“The rule of equity applied, that if a *cestui que* trust, after becoming *sui juris*, has with full knowledge of a breach of trust, for a long time acquiesced in it, equity will not relieve him”.

Hume *vs.* Beale, 17 Wall. 336.

“An infant’s deed may be avoided at any time after his reaching majority, until he is barred by the Statute of Limitations”.

Sims *vs.* Everhardt, 102 U. S. 300 (312).

“A delay of two years containing nothing to justify complainant’s delay in bringing the suit, shows undue delay on his part, and suit will be dismissed”.

Barbour *vs.* Hickey, 2 App. C. 207.

“The deed of an infant may be avoided at any time after becoming of age, until he is barred by the Statute of Limitations, providing there has been no word or act on his part indicating assent.”

Wells *vs.* Seixas, 24 Fed. R. 82.

“A minor is entitled to a rehearing, if applied for in 6 months; and to an appeal within 2 years, after his disability ceases”.

Bradford *vs.* Robinson, 7 Houston (Del.) 29.

“Unless the deed of an infant is avoided within a

reasonable time after becoming of age, it will be binding and obligatory”.

Keil *vs.* Healey, 84 Ill. 104.

“An infant who executes a deed during his minority, may upon coming of age disaffirm it; but he must exercise this right within a reasonable time.”

Dolph *vs.* Hand, 156 Pa. St. 91.

“The voidable deed of an infant must be disaffirmed within a reasonable time”.

Scott *vs.* Buchanan, II Humphreys (Tenn.) 468.

“Disaffirmance should occur within a reasonable time after removal of disability.”

Matherson *vs.* Peace, 2 Coldwell (Tenn.) 443.

“One who, after arriving at the age of 21 years, would avoid his deed to land made during minority, must do so within a reasonable time”.

Bingham *vs.* Barley, 55 Tex. 281.

“The infant ought to have rejected the contract within a reasonable time after he became of age”.

Bigelow *vs.* Kinney, 3 Vt. 353.

“Every contract of an infant, merely voidable, will bind him, after becoming of full age, unless he disaffirm it, within reasonable time after becoming of age”.

Richardson *vs.* Bright, 9 Vt. 368.

17. Where it appears upon the face of the record that parties barred by limitations are joined as plaintiffs with parties to whom the right of action has not accrued, and who sue prematurely—as in the case at bar—there is apparent misjoinder of plaintiffs.

“The action was prematurely brought.”

Frey *vs.* Allen, 9 App. C. 400.

“If the demurrer stated a misjoinder of parties plaintiff—there would be sufficient compliance with the provision of the Code”.

Palatine vs. Water Co. 90 App. D. S. C. N. Y. 548.

18. When it appears on the face of the Bill that defendant Norment had filed a declination to act as Trustee, and he was made a party solely in that capacity, and no relief was sought or grantable against him, there was misjoinder of parties defendant.

“There is consequently a misjoinder of parties defendant in the bill”.

Barber vs. Strong, 1 McArthur 575.

19. The rule of Equity pleading as to the probative force of defendants' answers, denying fraud; and what quantity and quality of evidence are required to overcome them is firmly established, as appears by subjoined citations.

“It is a well settled rule, that in a bill praying relief, when the facts charged in the bill as the ground for the decree are clearly and positively denied by the answer, and proved only by a single witness, the Court will not decree against the defendant”.

Bank vs. Geary, 5 Peter 99.

“Where the answer is responsive to the allegations of the complainant's bill, they must, to entitle him to relief, be sustained by the testimony of two witnesses, or of one witness corroborated by circumstances which are equivalent in weight to the testimony of another witness”.

Vigel vs. Hopp, 104 U. S. 441.

“This answer could only be overcome by the testimony of at least two witnesses, or of one witness with corroborating circumstances, and that the proofs in this case fail to break down the defendant's denial.”

Latta vs. Kilbourn, 150 U. S. 524.

“In equity very little reliance ought to be placed upon loose conversations or admissions of a party which are sought to overbalance his solemn denial on oath in his answer”.

Purcell vs. Coleman, 6 D. C. 59.

“Where a defendant is brought into Court to meet a

charge of fraud and effectively repels it, the complainant can not change his ground and obtain other relief”.

Clarke *vs.* Krause, 2 Mackey 559.

“Where a bill charges fraud in fact, and plaintiff fails in his proof he can not be aided under the prayer for general relief”.

Bailor *vs.* Daly, 18 D. C. 175.

“When the facts charged in a bill in equity as the ground for the relief sought, are clearly and positively denied by the answer and have been proved only by a single witness, the Court will not grant a decree against the defendant”.

Wheeler *vs.* Ryon, 1 App. C. 142.

“It is questionable whether an answer in equity can be overcome merely by circumstances alone without the testimony of any witness.”

Waters *vs.* Ritchie, 3 App. C. 379.

In the case at bar, the testimony offered in support of the bill, and which is the foundation of the decree appealed from, is in substance as follows:

Annie L. Dill testified that she is the widow of William H. Dill, who died November, 1898; and was the son of Peter Dill's widow, by her first marriage; that she is the mother of complainants; that Ann Dill died May 1905, aged 86 years; that Peter Dill died testate in 1897, and witness' children are beneficiaries thereunder; that witness' husband was an adopted son of Peter Dill; that she had ten children by her husband, of whom 4 died; that three died before, and one (Bertha Kearney) after Peter Dill's death; that William P. Dill is now 33; Marion 29; John H. 26; J. Edward 24; Leo A. J. 20; and Maurice 18; that witness was guardian [*ad litem*] for the minor children by appointment of the Supreme Court D. C.; witness had an infant, named Joseph, who died when about a week old; that Ann Dill died intestate; that witness does not know whether Ann Dill employed Lewis and Adriaans to settle up Peter Dill's estate; that witness first saw Lewis or Adriaans in 1898, “I met them in August, 1898, at my home 1630 Asquith St., Balto. Md.”; that witness did not know whether Lewis or Adriaans called; that witness could not identify Adriaans, then present, as the person who called; that the person who called said “that he wanted them to sign

a paper for Mrs. Ann Dill, to get her some money"; (Rec. p. 23); witness thinks Lewis called (Rec. p. 23); that the man called to get her children to sign the paper; that five children were then at home, besides witness and her husband (Rec. p. 23); that one of her children was working; that witness' husband was then in poor health; that witness' husband said he did not wish to have anything to do with the matter (Rec. p. 23); that this conversation with her husband occurred after the children had signed (Rec. p. 24); that the papers might have been read to the children, but witness does not remember; witness does not remember any conversation relating to Peter Dill's Will; that thereafter witness received other papers by mail from Lewis or Adriaans, and signed then in Baltimore, before Notary Strohmeyer (Rec. p. 26); that witness' five children signed before Strohmeyer, who was not her attorney, and who might have read the papers and witness then mailed the papers back to Lewis or Adriaans (Rec. p. 26); they were signed at Strohmeyer's office in Lexington St. (Rec. p. 26); that no papers were signed on that day (Rec. p. 26); that only one paper was signed in Strohmeyer's office (Rec. p. 26); that witness saw Lewis in the fall of 1899 and told him she did not wish to see him any more (Rec. p. 26); that I then saw him at 1628 East Oliver street, Baltimore, where I then resided (Rec. p. 27); that neither witness nor her children saw or communicated with Lewis or Adriaans after the fall of 1899 (Rec. p. 27); that no contract was entered into between witness' children and Lewis or Adriaans regarding fees (Rec. p. 27); that witness first learned of such a contract a year and a half ago from Mr. John Dumler, a lawyer of Baltimore; that witness then first knew of the misrepresentation and fraud set forth in the bill (Rec. p. 27); that Ann Dill's condition of health was poor, after Peter Dill's death (Rec. p. 28); that witness' children have not ratified the fee contract, or deed in trust since they became of age; on cross-examination witness said she signed the bill as a complainant; that she was present at the signing of the papers; that her recollection of the conversation is vague (Rec. p. 29); that two papers were signed—one in her house, and one in Strohmeyer's office (Rec. p. 30); witness does not know whether the papers were read or not (Rec. p. 30); that the papers signed in Strohmeyer's office were sent by mail (Rec. p. 30); that witness' husband died before the visit to Strohmeyer's office (Rec. p. 30); witness identifies her signature to two papers handed her (Exh. Adriaans 1, 2) (Rec. p. 31); witness had no communication, verbal or written, with Lewis or Adriaans after the fall of

1899 (Rec. p. 31); witness does not recognize the writing on Exh. Adriaans 3, 4, 5, or 6 (Rec. p. 32); witness does not identify the writing on Exh. Adriaans 7, 8 (Rec. p. 32); that after Peter Dill's death his widow lived for some time at Harris' Lot, Charles Co., Md.; witness remembers that Adriaans or Lewis brought a letter of introduction on the first visit (Rec. p. 33), which is probably destroyed (Rec. p. 33); that the letter was from Ann Dill, and she requested that the papers should be signed (Rec. p. 33); witness does not remember the language of the letter (Rec. p. 33); that the children signed a paper when this letter of introduction was presented (Rec. p. 33); that witness does not know Mr. Bradford (Rec. p. 33); witness does not remember what Lewis or Adriaans said at time of signing the papers (Rec. p. 33); witness' husband advised the children not to sign any more papers (Rec. p. 33); that after her husband's death witness took the children to Strohmeyer's office to sign more papers (Rec. p. 33); witness does not know what transpired between Adriaans or Lewis and Ann Dill or William P. Dill (Rec. p. 34); witness is positive her husband was dead when paper was acknowledged before Strohmeyer (Rec. p. 34); her husband was very sick in the fall of 1898 (Rec. p. 35); that Ann Dill could sign her name but could not write (Rec. p. 35); witness is positive Strohmeyer was not at her house and she never met him until she carried her children to his office (Rec. p. 35).

Marion A. Dill testified that she lives at 721 East 20th street, Baltimore and is 29 years old; that she is the daughter of William H. Dill, the son (by first marriage) of Ann Dill, and the adopted son of Peter Dill; that she is one of the beneficiaries of Peter Dill's Will; that she first met Lewis or Adriaans before her father's death, in his presence; that she does not know whether she met Lewis or Adriaans (Rec. p. 36); that on this first meeting witness signed a paper and was then 18 years old; witness does not remember signing the paper at her home on Asquith street, but does remember signing a paper in an office on Lexington street (Rec. p. 36); witness does not remember the conversation at the time of the signing (Rec. p. 37); witness is positive she signed on Lexington St. (Rec. p. 37); that witness had to get off from work at noon in order to sign the paper on Lexington St. (Rec. p. 37); that the object of *that* paper was to get the money for Ann Dill (Rec. p. 38); that the gentleman (Adriaans or Lewis) that called at her house called in the evening, after supper (Rec. p. 41); witness was in the Notary's office a few minutes only (Rec. p. 37); witness did not employ Lewis or Adriaans in

any legal proceedings (Rec. p. 38); witness did not agree to pay them for such services and only learned of the deed in trust one and a half years ago (Rec. p. 38); that the cash came to witness from Mr. Waters through John H. Dumler; that Ann Dill died May 3, 1906 aged 86 years; that neither Adriaans or Lewis was at Strohmeyer's office while witness signed a paper there (Rec. p. 41); that only witness' mother and brothers were there (Rec. p. 40); that witness' father was not at Strohmeyer's office (Rec. p. 40); witness does not remember her father being a witness to any papers (Rec. p. 40); or any gentleman being at her house to take an acknowledgment (Rec. p. 40); witness' father died Nov. 26, 1898 (Rec. p. 40); witness does not remember what was said by Lewis or Adriaans (Rec. p. 41); *witness' father or mother said the children had to sign to get some money for their grandmother Ann Dill* (Rec. p. 41); witness is sure Adriaans or Lewis called after supper (Rec. p. 41); witness examined Exh. 5 and thinks it is either her writing or her sister's (Rec. p. 41); that Exh. 3 and 4 were written by her sister Bertha (Rec. p. 41); that Bertha frequently wrote letters for her mother (Rec. p. 41); witness identifies Exh. 1 and 2 as in her mother's writing (Rec. p. 42); witness says that the allegations of fraud in the bill are not based on her knowledge (Rec. p. 42.)

John H. Dill testified that he lives at 1226 East Lafayette Ave. Balto. and is aged 26 years; that he remembers meeting Lewis or Adriaans in the fall before his father died, at his house (Rec. p. 43); that he called after supper was over (Rec. p. 43); witness signed a paper and *he only surmised, though nothing to that effect was said, that the object of the paper was to get money for his grandmother* (Rec. p. 46); afterwards witness signed a paper on Lexington St. during the noon hour (Rec. p. 46); witness' father was not living when he signed on Lexington St. (Rec. p. 46); witness did not employ Lewis or Adriaans in reference to the Estate of Peter Dill, or sign a free contract or deed in trust in respect of his interest in said Estate (Rec. p. 45); witness' first knowledge of the existence of such papers is one and a half years ago (Rec. p. 45); when he acquired the information through Mr. Dumler; witness was born Jan. 21, 1883 (Rec. p. 45); that neither Adriaans or Lewis ever rendered any legal services for witness (Rec. p. 45); witness did not ratify the contract and retained an attorney to rescind it (Rec. p. 45); witness had no conversation with Lewis or Adriaans at the first visit and Strohmeyer was not in the room when witness

signed the paper (Rec. p. 46); that afterwards witness signed a paper in Strohmeyer's office on Lexington St., but witness' father had intermediately died (Rec. p. 46); that neither Adriaans nor Lewis was present during the signing on Lexington St. (Rec. p. 46); witness only surmised that the object of the paper was to get money for his grandmother (Rec. p. 46); *no such conversation occurred the evening Adriaans or Lewis called at witness' house* (Rec. p. 46); witness' mother brought the paper to Strohmeyer's office and the whole family had this impression or surmise as to the object of the paper (Rec. p. 47); witness signed two papers and one was signed in the presence of his father and mother *with their approval* (Rec. p. 47); witness supposes that the allegations of false statements in procuring the paper *are untrue* (Rec. p. 48).

J. Edward Dill testified that he lives at 721 East 20th St. Balto. and was born June 18, 1885; witness has no recollection of seeing Lewis or Adriaans or signing any papers for them (Rec. p. 49); witness was 13 in 1898; witness remembers working in a drug store and during the noon hour one day he went to Lexington St. to sign a paper and witness went there with his mother (Rec. p. 49); witness did not knowingly employ Lewis or Adriaans as attorneys, or agree to compensate them from his share in the Estate of Peter Dill (Rec. p. 49); there was something said about the rents not coming in and Mr. Dumler was employed to look into it; that then Mr. Dumler reported the deed of trust and the suit was filed (Rec. p. 50); witness obtained his share of the personalty from Waters through Dumler (Rec. p. 50); witness' only knowledge as to misstatements by Lewis or Adriaans came from his attorneys (Rec. p. 51); *witness does not state that any misrepresentation was made to him* (Rec. p. 51).

Clarence F. Norment testified that he is the President of the National Bank of Washington; that he has no knowledge of the deed in trust wherein he was named as Trustee (Rec. p. 52); that he signed a renunciation of the trust, after Judge Cole had signed a similar paper (Rec. p. 53); that he was frequently inserted as Trustee without previous knowledge (Rec. p. 53); witness says that it is possible he told Mr. Lewis he would serve as Trustee if Judge Cole did (Rec. p. 54).

William P. Dill testified that he lives at 58 East 130th. St. N. Y. and was born Dec. 3, 1873; witness first met Adriaans in the spring of 1898 at the home of witness' grandmother, after the death of Peter Dill (Rec. p. 55); witness was introduced to Adriaans by his grandmother on a Sunday, after she had been to Cabin John Bridge (Rec. p. 56); witness next

saw Adriaans at witness' place of business in Balto. (Rec. p. 56); Adriaans called at the factory in the summer of 1898 and witness' father was then living (Rec. p. 57); witness signed a paper at the factory, after he saw his brothers and sister and father had signed it (Rec. p. 57); there was another man with Adriaans but he said nothing (Rec. p. 58); witness signed no other papers (Rec. p. 59); witness first learned through Mr. Dumler that there was a cloud on the property (Rec. p. 60); witness never ratified the papers (Rec. p. 60); that Ann Dill was easily influenced (Rec. p. 61); witness signed the paper in Balto. voluntarily (Rec. p. 62); witness first met Adriaans in May 1898 after witness had taken his grandmother to Cabin John Bridge (Rec. p. 62); witness thinks it was 5 or 6 months thereafter he met Adriaans in Balto. (Rec. p. 62); witness does not recall that Adriaans said anything at the factory (Rec. p. 63); Adriaans was there about 10 or 15 minutes (Rec. p. 63); witness signed because he saw the signatures of his brothers and sisters; witness could have read the papers, when they were handed to him, if he had wanted to read them (Rec. p. 64); witness signed no papers on Lexington St. (Rec. p. 64); witness might have signed 1, 2, or 3 papers (Rec. p. 65); witness never heard his brothers or sisters signed any papers on Lexington St. (Rec. p. 65); witness' brothers, sisters and father must have signed at the house before coming to the factory (Rec. p. 65); witness' grandmother never had any judicial inquiry as to her mental condition and traveled alone to Charles Co. Md.; to Balto.; to Pa. and other places without difficulty (Rec. p. 65); that Ann Dill lived 8 years after signing these papers (Rec. p. 66).

Leo A. J. Dill testified that he lived at 721 E. 20th street, Balto.; that he was born Nov. 4, 1888; that he does not remember meeting Lewis or Adriaans (Rec. p. 66); or of signing any papers for them (Rec. p. 67); that he does not remember going to Lexington St. to sign a paper before a Notary (Rec. p. 67); or of retaining Adriaans or Lewis to appear for him in the settlement of Peter Dill's Estate, or to compensate either of them from his share therein (Rec. p. 67); that he learned of the existence of such papers through Mr. Dumler one and a half years ago (Rec. p. 67).

Maurice E. Dill testified he lives at 721 E. 20th. St. Balto., and was born May 12, 1891; that he never met Adriaans or Lewis; witness remembers signing a paper on Lexington St., but has no recollection of signing any at his home (Rec. p. 68); witness learned a year and a half ago, from Mr. Dumler,

that he signed a conveyance of his interest in the Dill Estate (Rec. p. 69); witness did not sanction such papers (Rec. p. 69).

Joseph J. Waters testified that he lives at 1222 31st. St., and is a member of the bar of the Supreme Court, D. C.; that he is one of the executors of the Estate of Peter Dill (Rec. p. 69); that Oliver P. Johnson was his co-executor; witness is familiar with the services rendered by Adriaans and Lewis in connection with the Estate of Peter Dill; that in witness' opinion they were of no value, but a detriment, to the Estate (Rec. p. 70); that the services were not necessary for the beneficiaries of the Estate (Rec. p. 70); witness probated the Will of Peter Dill and made final distribution of the Estate (Rec. p. 71).

John H. Dumler testified that he is an attorney in Balto. Md.; that in the fall of 1907 J. Edward Dill retained witness to investigate the Estate of Peter Dill; visited Mr. Waters, and discovered this trust (Rec. p. 72); witness informed his client of this discovery; witness then introduced his client to Mr. O'Donoghue for the purpose of bringing this suit.

William C. Taylor testified that he is the Deputy Register of Wills; that he had then with him all the papers in the Estate of Peter Dill, Adm. 8225; and the entire record is offered in evidence herein.

J. H. Strohmeyer testified that his business address is 622 Equitable Building, Balto. Md.; that his vocation is real estate operator; that he is not now and never was an attorney (Rec. p. 74); that he was a Notary in Balto. in 1898, witness has no recollection of taking an acknowledgement of complainants to the deed in trust in issue here (Rec. p. 74); that if his signature and seal are on the paper the parties must have appeared and acknowledged before him (Rec. p. 75); that he was a Notary from May, 1896, to May, 1900; that whatever memoranda witness might have had of this transaction were destroyed in the Baltimore fire (Rec. p. 75); witness has no recollection of taking an acknowledgement of the Dill family, or of going to a house on Aisquith street, or of going to a label factory (Rec. p. 76).

The Court will readily perceive in weighing this testimony, that the witness Annie L. Dill is not only self-contradictory in numerous important particulars, but that she is also flatly contradicted in material statements by her own children. A few contradictions might be specified as follows:

Annie L. Dill testified, on direct, that the person who called said "that he wanted them to sign a paper for Mrs. Ann Dill, to get her some money" (Rec. p. 23). On cross-examination

she said "that she was present when the papers were signed, and her recollection of the conversation is vague" (Rec. p. 29); also "that she does not know what Adriaans or Lewis said at the time the paper was signed" (Rec. p. 33). Marian A. Dill testified that her father or mother said the children had to sign to get some money for their grandmother Ann Dill" (Rec. p. 41). John H. Dill testified "he only surmised, though nothing to that effect was said, that the object of the paper was to get money for his grandmother" (Rec. p. 46); that "no such conversation occurred the evening Adriaans or Lewis called at his house" (Rec. p. 46); that witness "signed in the presence of his father and mother with their approval" (Rec. p. 47); that the allegations in the bill "of false statements in procuring the papers are untrue (Rec. p. 48).

Annie L. Dill also testified that one paper was signed at her house, the day Adriaans called" (Rec. p. 30); that the other paper was mailed from Washington, executed before Strohmeyer on Lexington St. and remailed (Rec. p. 30). Wm. P. Dill testifies he signed three papers at the factory, which had previously been signed by his brothers and sister, and witnessed by his father (Rec. p. 65).

Annie L. Dill also testified that she acknowledged before Strohmeyer, a paper mailed by Lewis, when the paper itself (Ex. 25, Rec. p. 89) proves the execution was before Bradford; and she testified she does not know Bradford (Rec. p. 33).

Annie L. Dill also testified that neither she nor her children saw or communicated with Lewis or Adriaans after the fall of 1899 (Rec. p. 31); while she and her children identify letters written, or dictated, by her dated April 22, 1900 (Rec. p. 151 Exh. 8). May 20, 1900 (Exh. 24, Rec. p. 157); June 1, 1900 (Rec. p. 158, Dft. Ex. 26), which enclosed the power of attorney of same date (Rec. p. 89, Dft. Ex. 25).

Annie L. Dill also testified that at the time the paper was signed before Strohmeyer, her husband was dead (Rec. p. 34); whereas the deed in trust at bar (Rec. p. 11) was acknowledged before Strohmeyer, and her husband was a witness to its execution. She is positive Strohmeyer was not at her house, and she never met him until she carried her children to his office" (Rec. p. 35).

To combat this testimony offered on behalf of plaintiffs, the following was offered on behalf of defendants.

John H. Adriaans testified that he is one of the defendants herein; that he is an attorney; that he became connected with the settlement of the Estate of Peter Dill (Rec. p. 79); that witness was introduced by his co-defendant Lewis to decedent's

widow Ann Dill (Rec. p. 79); that said widow's maiden name was Perry (Rec. p. 79); that she married one Richard McDonald (Rec. p. 79); that complainants were her grandchildren through her son William (Rec. p. 80); that upon the death of said McDonald she became the wife of decedent (Rec. p. 80); that she for life and complainants in fee thereafter were the sole devisees of a Will executed by said Peter Dill (Rec. p. 80); that upon the submission of said Will for probate a caveat was interposed thereto by the next of kin to decedent (Rec. p. 80); that witness and Lewis were requested by said Ann Dill and complainants to defend said Will against said caveat (Rec. p. 81); that neither said Ann Dill nor complainants paid witness or Lewis for such services; that they claimed to be unable to pay then; that they agreed to pay a percentage (20) out of the Estate, in the event said Will was admitted to probate; they also agreed to evidence such promise by a lien on the Estate in the form of a deed of trust; that this deed of trust is now the subject-matter of this suit; that said William McDonald, and all his children (the complainants) changed their names to Dill (Rec. p. 80); that said Ann Dill furnished witness a list of witnesses who could be summoned to testify as to Peter Dill's soundness of mind (Rec. p. 80); that "Def. Exh. 1" represents the genealogy of complainants (Rec. p. 81); that "Def. Exh. 2" is the list of proposed witness on the trial of the caveat (Rec. p. 81); that "Dft. Exh. 3" is a power of attorney, dated Aug. 30, 1898, signed by said Ann Dill and complainants, authorizing witness and Lewis to conduct the defense to the caveat, which paper was afterwards filed in Adm. 8225, Estate of Peter Dill (Rec. p. 81); that a true cop of this power of attorney is in this record (p. 81); that witness and Lewis were also directed to defend a receivership suit, filed by the caveators as complainants in Charles Co. Md. No. 912 Eq., (Rec. p. 83); that this suit sought the receivership of a farm in said Co., belonging to decedent's Estate; that "Def. Exh. 4" is a copy of the Bill filed in Charles Co. (Rec. p. 83); that witness prepared an answer for Ann Dill to sign and acknowledge; that the same was duly filed in said suit after execution by said Ann Dill; that "Def. Exh. 5" is a true copy of said answer (Rec. p. 84); that Ann Dill also executed a petition, filed in the same case, a true copy whereof is "Dft. Exh. 6" (Rec. p. 84); that "Dft. Exh. 7" is a postal card from Ann Dill to S. H. Lewis (Rec. p. 84); that "Def. Exh. 8, 9" are a letter and envelope from Ann Dill to S. H. Lewis (Rec. p. 85); that "Def. Exh. 10" is a letter from Judge Merrick to witness (Rec. p. 85); that

"Def. Exh. 11, 12" are a letter and envelope from Jas. McColgan (caveators' attorney) to witness (Rec. p. 85); that "Def. Exh. 13" is a letter from Judge Merrick to witness (Rec. p. 85); that "Def. Exh. 14, 15," are a letter and envelope from decedent's brother Edward Dill to witness (Rec. p. 86); that "Def. Exh. 16, 17" are a letter and envelope from Edward Dill to witness (Rec. p. 86); that "Def. Exh. 18" is a receipt from the Clerk of Court, in Chas. Co., for recording the trust, which is the subject-matter of this suit (Rec. p. 86); that "Def. Exh. 19, 20" are a letter and envelope from the Clerk of said Court of witness (Rec. p. 86); witness testified that he looked diligently but fruitlessly among his papers for said original contract and deed in trust (Rec. p. 86); that a true copy of the contract is contained in a Bill in Equity in this Court, No. 21,889 (Rec. p. 87); that this contract is correctly copied on p. 19,20 of def. testimony (Rec. p. 87); that "def. exh. 21" is a postal from Ann Dill's nephew J. R. Perry to S. H. Lewis (Rec. p. 88); that "Def. Exh. 22, 23" are a letter and envelope from Ann Dill (while in Chas. Co., Md.) to S. H. Lewis (Rec. p. 89); that "Def. Exh. 24" is a postal from complainants' mother to S. H. Lewis (Rec. p. 89); that "Def. Exh. 26" is a letter from complainants' mother, as guardian *ad litem*, to S. H. Lewis, enclosing therewith a power of attorney (Def. Ex. 25) authorizing Lewis and witness to act for them in settling Peter Dill's Estate (Rec. p. 89); that "Def. Exh. 27, 28" are two postals addressed by J. J. Waters, Ex. of the Estate of Peter Dill, respectively to S. H. Lewis and witness (Rec. p. 90); that "Def. Exh. 29, 30" are postals from said Waters to Lewis and witness (Rec. p. 91); that witness rendered services in co-operation with said Lewis, both in Marlborough, Md., and in the District of Columbia, resulting in obtaining a final decree of the Probate Court admitting Peter Dill's Will, theretofore contested, to probate and record (Rec. p. 94); that witness obtained the signature of decedent's widow, on the same day to a power of attorney; a fee contract, and a deed in trust securing said contract (Rec. p. 92); and he secured the signatures of complainants to the same papers in presence of their parents (Rec. p. 92); that the deed of trust was simply a security to ensure performance of the fee contract (Rec. p. 92); that the deed of trust was acknowledged here before J. B. Miller as Notary by decedent's widow, and in Balto. before Mr. Strohmeyer as Notary by complainants (Rec. p. 110); that no false representations were used in obtaining execution of the papers (Rec. p. 113); that complainants were aware, through correspondences with decedent's

widow, of the object of witness' visit (Rec. p. 112); that witness delivered to complainants a letter of introduction from Ann Dill (Rec. p. 112); that complainants realized they had no heritable blood towards decedent, and unless said Will was probated would derive no benefit from his Estate (Rec. p. 92); that the papers were read by, or to, complainants in presence of their father, then living (Rec. p. 93); that William P. Dill executed the papers separately from the other complainants, at his place of business (Rec. p. 93); that the papers were handed to him for perusal (Rec. p. 93); that he read them (Rec. p. 93); that he then voluntarily executed them (Rec. p. 93); that witness at once took needful steps, as shown by the record of Adm. 8225, to bring the contest to a termination and finally secured probate of the Will (Rec. p. 93); that witness had not received any compensation for his services and had worked on the case from 1898 to date (Rec. p. 96); that owing to the circumstances of the fee being contingent upon success, and that the Estate could not be liquidated, by terms of the Will, until the youngest child became of age, it was agreed that twenty per centum of the Estate was a reasonable fee (Rec. p. 96); on cross-examination witness testified he prepared the power of attorney (Def. Exh. 3; Rec. p. 81); the contract (Rec. p. 87); and the deed of trust (Rec. p. 11); that "Def. Exh. 25" is in the handwriting of S. H. Lewis, (Rec. p. 106); witness stated that the original contract and deed in trust were last in his possession and are now lost (Rec. p. 106); that witness and Lewis co-operated in the management of the Will contest (Rec. p. 107); that before visiting Mrs. Dill's house, with S. H. Lewis, witness had read Peter Dill's Will, and the other papers then on file; that after Mrs. Dill, S. H. Lewis, and witness had agreed upon the terms of the contract, witness sent Mr. Lewis after a Notary, and he returned with J. B. Miller (Rec. p. 108); meanwhile witness wrote the three papers in Mrs. Dill's parlor, in her presence conformably to the agreement (Rec. p. 109); witness wanted 25 per cent of the Estate and she was willing to give 15 per cent (Rec. p. 109); we finally compromised on 20 per cent of the value of the Estate, which was then unknown (Rec. p. 109); neither Lewis nor witness knew previously as to the exact contract to be entered into and it was all agreed upon during the visit (Rec. p. 109); that on the way to the Dill house witness and Lewis stopped to get a blank deed of trust, in order to secure the fee contract by a lien upon the property (Rec. p. 110); that witness went to the house of Annie L. Dill, complainants' mother, in Balto., bearing a letter of intro-

duction from decedent's widow Ann Dill (Rec. p. 110); that his letter was delivered to, and kept by, Mrs. Annie L. Dill (Rec. p. 110); that there were then present William H. Dill and Annie L. Dill, parents of complainants, besides all the children, except William P. Dill (Rec. p. 110); that it was 1 or 2 p. m. when witness arrived (Rec. p. 110); that after about an hour's discussion of the subject, and the parties having agreed to sign, witness went out for a Notary, and came back with Mr. Strohmeyer (Rec. p. 110); that he took their acknowledgement, inserting the ages of the children in the jurat at witness' request (Rec. p. 110); that complainants' father signed as a witness (Rec. p. 110); that then the Notary and witness went to the factory where William P. Dill was working, and took his acknowledgement there (Rec. p. 110); William H. Dill was in the dining room and read the papers over to the children, and the facts were recited and discussed in the conversation (Rec. p. 111); witness described the condition of the Will contest at the time he entered into the contract with complainants (Rec. p. 112); that no practical step had been taken beyond filing the caveat (Rec. p. 112); that this failure to take some action to terminate the contest occasioned decedent's widow's dissatisfaction with J. J. Waters, and was the cause of witness' employment (Rec. p. 117); that witness' principal object in getting complainants to concur in the employment was that Ann Dill only had a life estate, which might terminate before the settlement of Peter Dill's Estate (Rec. p. 120); that unless the remaindermen in fee concurred in the employment witness might lose compensation by extinction of the life estate, and complainants would get the benefit of services valuable to them without liability for compensation (Rec. p. 121); that witness would not have entered upon the employment if complainants had not concurred in the retention (Rec. p. 121); that neither of the Trustees were consulted about their willingness to serve (Rec. p. 124); that Mr. Lewis and witness selected Mr. Norment as the Trustee in their behalf—he being their common landlord; and Mrs. Dill selected Judge Cole as a Trustee in her behalf (Rec. p. 124); that the trust was withheld from record until probate of the Will because the contract was contingent upon securing the probate (Rec. p. 124); that shortly after recording the trust both Trustees filed a declination to serve (Rec. p. 124); that witness has produced in the record all communications from complainants on this subject (Rec. p. 125); that the date of the power of attorney "Def. Exh. 25" from complainants mother, as guardian *ad litem*, is June 1, 1900 (Rec. p. 126);

that witness saw the complainants four or five times subsequently at their residence in Balto., when visiting that city on other business (Rec. p. 128); that complainants never visited witness in his office (Rec. p. 129); that some of witness' work appears in the records of Adm. 8225; some of it consists in interviewing witnesses, making argument and preraring and filing papers in Marlborough (Rec. p. 130); that one of the last services rendered by witness, for the benefit of complainants, was to surcharge and falsify the account filed by J. J. Waters (Rec. p. 131); that witness also filed the Equity suit 21,889 for the benefit of complainants (Rec. p. 132); that two caveats were filed, one preceding and the other succeeding the petition for probate of the Will (Rec. p. 133); that witness' services are not yet completed (Rec. p. 133); that by the power of attorney it is still witness' duty to procure liquidation and distribution of the Estate, if possible (Rec. p. 133); that by procuring probate of the Will the witness considers the fee contracted for was earned, the subsequent services being merely ancillary thereto (Rec. p. 134); witness and Lewis made a demand in writing, filed in Adm. 8225, on the Executors to pay their claim (Rec. p. 135); that Waters obtained an order vacating our final decree about two years thereafter (Rec. p. 143); then he had a formal, uncontested jury trial on Jan. 16, 1902 (Rec. p. 167); that about ten days thereafter the Court of Appeals held the jury was illegally constituted and the verdict void (Rec. p. 137); that the suit 21, 889 was filed by witness for two reasons: first, to enjoin an unnecessary sale of part of the Dill Estate; second, to substitute new Trustees for those who declined to act (Rec. p. 137); that witness' purpose was to aid the Executors in settling the contest—not to antagonize them (Rec. p. 144).

Frank D. Lockland testified that he was employed in the Register of Wills' office; that he then had with him the papers in the Estate of Peter Dill, Adm. 8225; witness identified "Def. Exh. 3" as attached to an answer filed by A. G. Hatfield in said Estate on June 15, 1900 (Rec. p. 97); witness also identified "Def. Exh. 25" as part of the record of said cause, being a power of attorney from complainants' mother as guardian *ad litem* of complainants, to Lewis and witness (Rec. p. 98).

J. B. Miller testified that in 1898 he was a Notary Public, D. C. (Rec. p. 98); that about Aug. 30, 1898 he visited the house of decedent's widow at the request of, and accompanied by, S. H. Lewis; that he took the acknowledgement of Ann Dill to a power of attorney and deed in trust (Rec. p. 98);

that he remembers clearly the circumstances connected with the transaction (Rec. p. 99); that there were then present, besides witness, Wm. M. Weaver; S. H. Lewis; J. H. Adriaans; and Ann Dill (Rec. p. 99); witness identifies his signature to "Def. Exh. 3"; that witness took Ann Dill's acknowledgement to two papers on that occasion (Rec. p. 99); that Mrs. Dill called Mr. Weaver from adjoining premises to act as witness (Rec. p. 99); that witness only took the acknowledgement of Ann Dill (Rec. p. 99); that Mrs. Dill seemed to be about 60 years of age (Rec. p. 100); that witness explained the papers to Ann Dill (Rec. p. 100); that one paper was a power of attorney and the other a deed in trust (Rec. p. 100).

William M. Weaver testified that he knew Ann Dill in her lifetime and lived near her at 2417 Wisconsin Ave. (Rec. p. 102); witness identifies his signature to "Def. Exh. 3" (Rec. p. 102); that at the time he signed said paper as witness there were present J. B. Miller, Notary; J. H. Adriaans; and another man unknown to witness (Rec. p. 103); that he was called into Mrs. Dill's house by her act as witness (Rec. p. 103); that he signed two papers as witness (Rec. p. 103); that the only person whose signature he witnessed was Ann Dill's (Rec. p. 103); witness had known Ann Dill all her life (Rec. p. 103); that she was then in her 60's (Rec. p. 104); that she seemed to be all right then (Rec. p. 104); that Ann Dill told him she wished him to witness her signature (Rec. p. 104); that the papers were not read or explained to Mrs. Dill in witness' presence (Rec. p. 104); that witness signed at the request of Mrs. Dill solely (Rec. p. 104).

It is respectfully submitted that the evidence on both sides, so far from tending to establish the allegations of the Bill, tend in the opposite direction. The witness William P. Dill could not testify as to what occurred when his co-appellees signed; nor conversely. He testified that when the papers were presented to him they had been signed and acknowledged by his brothers and sister, and witnessed by his father. These circumstances influenced him in signing. This corroborates appellant's testimony as to the procedure. As for the execution of a paper on Lexington St.—on which their recollection appears much clearer than as to the matters at bar—the appellees all agree first: that their father was then dead—the papers at bar were witnessed by the father; and second, that neither Lewis nor Adriaans were then present. So it is apparent that this paper (executed on Lexington St.) is not involved with the papers at bar. Appellant knows nothing of this paper, and has every reason to believe it was sent to ap-

pellees, for execution, by J. J. Waters; and it is clear from appellees' testimony that they are confusing the incidents surrounding the execution of this paper on Lexington St. with the incidents attending the execution of the papers at bar.

20. The gross laches of appellees, in filing their Bill in Nov. 1908, to annul a contract made in Sept. 1898 has deprived the Court, and appellant of the testimony of three witnesses, to-wit, William H. Dill, father of appellees, who died Nov. 26, 1898; Ann Dill who died May 3, 1906 and Samuel H. Lewis, who died Oct. 20, 1909. These witnesses were familiar with the *res gestae* of the transactions at bar, and it is no fault of appellant that the testimony of these witnesses is not before the Court. The late Chief Justice of the U. S. Supreme Court, under circumstances not essentially differing, in this respect, from those at bar, used appropriate language, as to the impropriety of opening such transactions.

"In all cases where actual fraud is not made out, but the imputation rests upon conjecture, where the seal of death has closed the lips of those whose character is involved, and lapse of time has impaired the recollection of transactions and obscured their details, the welfare of society demands the rigid enforcement of the rule of diligence."

Hammond *vs.* Hopkins, 143 U. S. 224.

It was strenuously argued at the bar below, to justify the decree sought by the Bill:

1. That it was the duty of the Executors named in the Will, who offered the same for probate, to defend any attack on the Will.

2. That if such Executors needed legal aid, the Court below had authority to permit them to employ additional counsel to defend the Will.

3. That this duty cast by law upon the Executors precluded the beneficiaries of a Will from employing counsel to defend the Will.

4. That the Executors were doing their duty in the premises, with the requisite degree of celerity and skill.

5. That appellant and his associate were unnecessary and superfluous in the case.

6. That the services rendered by appellant and his associate Lewis were not only of no value to the Estate, but of positive detriment and damage thereto.

This argument will doubtless be renewed in this Court. It may therefore be appropriate briefly to examine these objections.

1. It was held by this Court (*Tuohy vs. Hanlon*, 18 App. C. 225) that:

“The Supreme Court of the District of Columbia has power to allow an Executor expenses incurred in employing counsel to resist a caveat to a Will”.

2. It is conceded that the records of the Court below will furnish numerous instances where legal aid has been supplied by the Court upon application of the Executors, to defend the attack on a Will offered for probate. The Estate of Peter Dill (Adm. 8225) furnishes such an instance. The Executors filed a petition for such counsel on May 18, 1900 and obtained *ex parte* an order granting the same at a time when the enemies of the Will had disappeared, as a result of the labors of appellant and his associate Lewis, beginning Sept. 1898; and when the obtention of such order was futile.

3. That the privilege of an Executor to ask for legal aid, precluded the beneficiaries of the Will from supplying the same by counsel of their selection, is respectfully denied. The beneficiaries of the Will had more interest in sustaining the Will than the Executors thereof; and they had an absolute right to provide safeguards to protect their interests. A similar contention was recently considered by this Court in *RR. Co. vs. Hawkins*, 38 W. L. R. 425, 427. This Court then decided that the failure of an Executor to institute and prosecute an action beneficial to the distributees of an Estate, entitled them to the appointment of an Administrator to accomplish that result.

4. That the Executors were doing their duty, in the Dill Estate, with celerity and skill is refuted by the record of the case, which shows that from May 19, 1898 to October 14, 1898 no step whatever was taken by them in the cause. The latter step might not then have been taken had not appellant and his associate on Sept. 6, 1898 initiated proceedings in the direction of bringing the contest to a termination. Did this inactivity of the Executors justify the beneficiaries of the Will in bringing counsel of their selection into the cause, not to antagonize, but supplement, the efforts of the Executors? They apparently believed they had such right.

5. That appellant was not superfluous in the Will cause appears from the fact that he obtained a final decree on Sept. 28, 1900 disposing of the caveat, and admitting the Will to probate.

6. Whether appellant's services were beneficial to appellees

is not the criterion by which judgment should be passed. The test of the case is: Did appellant perform his contract to such degree as entitled him to the compensation thereby promised? The question of the value of the services was to be determined by appellees when they contracted. They assumed it would be beneficial to them to reach the result aimed at by the contract; to wit: the defeat of the caveat and the admission of the Will to probate. Appellant reached that result, and thereby fulfilled his part of the contract. In point of fact, appellant believes his services were beneficial to appellees, and not detrimental or damaging. It is true that side issues were injected into the probate cause, that had no tendency to promote the progress thereof. But these side issues were not brought there by appellant, but by the "Managing Executor" J. J. Waters, without the approval, or even cognizance, of his co-executor. From the beginning said Waters resented appellant's selection by the beneficiaries of the Will, and made no concealment of his antagonism. His procurement of the order of Nov. 15, 1901—purporting to vacate a final decree of Sept. 28, 1900—and his proceedings subsequent thereto indicated his hostility to appellant.

It will also be argued at the bar here, as below, that the decree obtained by appellant on Sept. 28, 1900 is void because after issues framed, there can be no legal disposition thereof without the intervention of a jury; and *In Re Obold*, 30 W. L. R. 345, will be cited to support that proposition. But this case only decides that such issues could not be dismissed by the Register of Wills, but did not decide that the Court could not dismiss them without a jury. In that very case, (Adm. 9472) the Court dismissed the second caveat without a jury, after issues framed. Similar practice was followed in Adm. 10,139 and 15,801. This practice was expressly approved in *Pegg vs. Warford*, 4 Md. 385 and *Marriot vs. Handy*, 8 Gill 31.

It may also be argued, at bar, that appellant did not complete performance of his contract insofar as he failed to secure liquidation of the Estate. As appellees, by their action, frustrated appellant's completion of the contract in this respect. this objection should not avail them. (2 Parsons on Contracts 522).

Appellees' evidence is moreover contradictory on that subject. Waters testifies he made final distribution of the Estate (Rec. p. 71); Appellees testify they only received the personalty, through Attorney Dumler (Rec. p. 50).

It is respectfully submitted that the errors assigned, find

ing their foundation in the decree appealed from—radiating therefrom as spokes from a hub—are in quantity and quality of such nature as to constitute reversible error; and to justify this Honorable Court in vacating the decree appealed from, and in directing the dismissal of the Bill with costs in both Courts.

Respectfully Submitted,

EDWARD L. GIES,
TRACY L. JEFFORDS,
Attorneys for Appellant.

Note.—No exhibits were offered on behalf of appellees; except those filed with the Bill. Those offered by appellant were designated differently by the two Examiners. Only such of appellant's exhibits were produced before appellees' Examiner, as were needed for identification purposes. To avoid confusion, those exhibits that were marked differently by the two Examiners are specified below:

Appellees' Exhibit No. 6 is identical with Appellant's Exhibit 7.

Appellees' Exhibit No. 3 is identical with Appellant's Exhibit No. 8.

Appellees' Exhibit No. 7 is identical with Appellant's Exhibit No. 22.

Appellees' Exhibit No. 8 is identical with Appellant's Exhibit No. 23.

Appellees' Exhibit No. 5 is identical with Appellant's Exhibit No. 24.

Appellee's Exhibit No. 2 is identical with Appellant's Exhibit No. 26.

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

FEB-14-1911

Henry W. Hodges
Wilson

IN THE
Court of Appeals, District of Columbia

FEBRUARY TERM, 1911.

No. 2253.

JOHN H. ADRIAANS, *Appellant,*

vs.

WILLIAM P. DILL, *et al., Appellees.*

BRIEF FOR APPELLEES.

DANIEL W. O'DONOGHUE,
Attorney for Appellees.

IN THE
Court of Appeals, District of Columbia

FEBRUARY TERM, 1911.

No. 2253.

JOHN H. ADRIAANS, *Appellant*,

vs.

WILLIAM P. DILL, *et al.*, *Appellees*.

BRIEF FOR APPELLEES.

STATEMENT OF CASE.

Peter Dill died in the District of Columbia on the 18th day of December, 1897, leaving a last Will and Testament in which he devised certain real estate, to-wit, parts of lots 251 and 252 in Beatty and Hawkins' addition to Georgetown, D. C., and also certain real estate in Charles County,

in the State of Maryland, to his wife, Ann Dill, for life and on her death to the six appellees herein, to-wit, William P. Dill, Marian A. Dill, John H. Dill, J. Edward Dill, Leo A. J. Dill and Maurice E. Dill, in fee.

The appellees were the children of one William McDonald who was the adopted son of said Peter Dill, deceased, who assumed the name of Dill in lieu of his own name of McDonald and who was also the natural son of said Ann Dill, widow, by previous marriage. This William (McDonald) Dill, a stepson and adopted son of Peter Dill, deceased, married one Annie L. Dumler of Baltimore City, Maryland, who appears in this case as the mother of the appellees and as the guardian and next friend of the minor appellees.

Under the Will of said Peter Dill, deceased, Joseph J. Waters and Oliver P. Johnson, both of whom were lawyers and members of the Bar of the District of Columbia, were appointed Executors and Trustees thereof. They accepted the executorship and trust under said Will and proceeded to have said Will admitted to probate and record and to administer the trusts thereunder. There was a Caveat filed to said Will by some non-resident alleged collateral heirs of Peter Dill, deceased. Said Caveators, after issues were framed for trial under said Caveat, gave up the contest and allowed the case to go by default against them without any opposition on their part. The Will of said Peter Dill was finally admitted to probate and record on February 5, 1902, on the formal verdict of a jury at the instance and as a result of the labors of said Executors and Trustees under said Will. There was a sale of the real estate in Charles County, Maryland, by the Executors and Trustees under said Will under power vested in them thereunder and the Executors and Trustees distributed the proceeds in their hands to the parties thereunto entitled

and accounted therefor in proper form to the Probate Court of the District of Columbia.

On, to-wit, August 30, 1898, John H. Adriaans, appellant, and one Samuel H. Lewis, who died pending this suit, on, to-wit, October 20, 1909, both of them being lawyers, called upon Ann Dill, the widow of Peter Dill, deceased, at her residence in Georgetown, D. C., she being then an old woman of about seventy-eight (78) years of age, and in poor health and easily influenced; and persuaded her by the representation that they were going to get money for her to execute certain papers, to-wit, a power of attorney appointing said Adriaans and Lewis to represent her in the contest of the Will of her husband, Peter Dill, deceased, also a contract whereby she agreed to pay said Adriaans and Lewis twenty (20%) per cent of the value of the estate involved as a contingent fee in the event they procured the probate of said Will and a sale and distribution of the proceeds of said estate and also a Deed of Trust on the real estate in which said widow had only a life interest under the said Will of deceased to secure said fee contract.

The appellees were all made parties to these three alleged instruments, to-wit, the power of attorney, the fee-contract and the Deed of Trust although the said Adriaans and Lewis had never met them or been consulted or engaged by them as attorneys. The appellant Adriaans went to Baltimore within a day or two after the execution of the said papers by Ann Dill, widow, where the appellees resided, having a letter from the said Ann Dill, widow. Now the appellees' ages at this time were as follows:

William P. Dill, 21 years of age; Marian A. Dill, 18 years of age; John H. Dill, 15 years of age; J. Edward Dill, 13 years of age; Leo A. J. Dill, 9 years of age, and Maurice E. Dill, 7 years of age. Their father, William McDonald Dill, and their mother, Annie L. Dill and five of the chil-

dren, all except the eldest, William P. Dill, were at home in the early evening when the appellant Adriaans called there. The father, William McDonald Dill, was very sick, in fact dying with cancer, his death occurring about two months thereafter, to-wit, in November, 1898; the family was very poor and they were not well educated or in anywise versed in the affairs of life.

The appellant Adriaans obtained the signatures to certain papers on said occasion after representing to said children and their parents that the object thereof was to obtain money for their grandmother, Ann Dill, in Georgetown, D. C., who was in needy circumstances. The papers signed were not read by the appellees or their parents nor were the contents thereof made known by the appellant Adriaans to the appellees or their parents. Thereupon the appellant Adriaans went to the printing shop where the eldest child, to-wit, appellee William P. Dill was employed and under the same representation that the object of said papers was to obtain money for his grandmother, Ann Dill in Georgetown, D. C., and also on the representation that his brothers and sisters had signed said papers, he was induced to sign the same without reading the same or knowing the contents thereof or having the effect of said papers made known to him.

The appellant Adriaans and his associate Lewis thereupon undertook to intrude themselves upon the executors and trustees of the estate of Peter Dill, deceased, in the settlement of said estate, and by subterfuge obtained a decree admitting said Will of said Peter Dill, deceased, to probate and record on September 28, 1900, without the verdict of a jury, which decree, however, when the facts and circumstances surrounding the procurement thereof were made known to the Court, was promptly set aside and declared null and void and thereafter, as stated above, said

Executors and Trustees had said last Will and Testament properly admitted to probate and record on February 5, 1902.

Adriaans and Lewis kept the Deed of Trust securing the fee-contract secret for more than two (2) years after the same was executed and did not record the same until September 28, 1900. Said Adriaans and Lewis in preparing said Deed of Trust designated Clarence F. Norment, President of the National Bank of Washington, and Charles C. Cole, then one of the associate justices of the Supreme Court of the District of Columbia, as Trustees under said Deed of Trust, without their knowledge or consent. Said Trustees, Norment and Cole, however, within a month after the recording of said trust, and within a few days after they had obtained knowledge thereof, immediately filed renunciations of said trust in the Recorder of Deeds' Office of the District of Columbia, on, to-wit, October 31, 1900, and October 4, 1900, respectively.

Strange as it may seem none of the appellees nor their mother ever visited the said Adriaans or Lewis at their law offices in Washington, although they were their alleged clients, according to the appellant's contention, for several years. There is not a single communication or letter offered in evidence from the appellant Adriaans or his associate Lewis to the appellees, their alleged clients, during the several years they claim to be acting as their attorneys. The appellant Adriaans offers a subsequent power of attorney, dated June 1, 1900, obtained from Annie L. Dill, the mother of appellees, as guardian ad litem for the infant heirs of Peter Dill (R. 89), but the same must be read in conjunction with the letter of Mrs. Annie L. Dill to said Lewis (R., 158), nor did said guardian ad litem ever obtain any authority from the Probate Court to employ an attorney. Neither the appellant Adriaans nor his associate

Lewis ever called upon the appellees or their mother in Baltimore more than once or twice after the first interview at which the papers were signed and at said last mentioned interview said appellant Adriaans or his associate Lewis was told by the mother of appellees that she did not wish to see them or have anything to do with them (R., 27).

The appellant Adriaans and his associate Lewis never made any demand directly or indirectly on the appellees or their mother for the payment of any fee alleged or claimed to be due them under said alleged fee contract.

On May 3, 1906, Ann Dill, the widow of Peter Dill, died in the District of Columbia, being eighty-six (86) years of age. In the latter part of the following year, to-wit, in the winter of 1907, one of the appellees, J. Edward Dill, employed John H. Dumler, a member of the bar in Baltimore City, State of Maryland, to go to Washington and investigate the settlement of the Estate of Peter Dill, deceased, in reference to the personal estate; since the widow, Ann Dill, had been dead for more than a year and no settlement of said case had been had. Said John H. Dumler, attorney at law, came to Washington, interviewed Mr. Joseph J. Waters, the surviving Executor under the Will of Peter Dill, deceased, obtained a settlement of the personal estate of Peter Dill, deceased, for the appellees and learned for the first time of the existence of the alleged Deed of Trust on record in the Recorder of Deeds Office in the District of Columbia, securing the alleged fee-contract of Adriaans and Lewis. Mr. Dumler immediately obtained a certified copy of the same and brought it to the attention of *the appellees, who for the first time, in the latter part of 1907 or the early part of 1908, learned of the existence of said alleged Deed of Trust and of the alleged claim of Adriaans and Lewis for a fee for alleged services growing out of the alleged relation of attorneys and client between them and said Adriaans and Lewis.*

Thereupon, in the spring of 1908 the appellees, through John H. Dumler, Esquire, placed the case in the hands of their present attorney in the District of Columbia, Daniel W. O'Donoghue, Esquire, who in the fall of the same year filed a Bill in Equity in this case in the Supreme Court of the District of Columbia, praying for the cancellation of said alleged fee-contract and said alleged Deed of Trust securing the same and praying that both papers be declared null and void.

The ages of the appellees at the time of filing said Bill in Equity on November 27, 1908, were as follows: William P. Dill 32, Marian A. Dill 28, John H. Dill 25, J. Edward Dill 23, Leo A. J. Dill 19, and Maurice E. Dill 17. That each and all of said appellees discovered the fraud perpetrated upon them by the appellant Adriaans and his associate Lewis for the first time within a year prior to the filing of the original Bill of Complaint in this case.

The defendant Clarence F. Norment, surviving trustee under said Deed of Trust, filed a formal answer stating that the use of his name in said Deed of Trust was without his consent or authority, and that he had filed a renunciation thereof and consenting to a decree relieving him from all title and interest thereunder. The defendant Lewis filed an Answer denying that he practiced any misrepresentations or fraud on the appellees. The defendant Adriaans, who is the appellant in this Court, filed a demurrer to the Bill which after being fully argued before Mr. Justice Barnard was overruled (R., 168) and thereupon said appellant Adriaans filed an Answer denying the misrepresentations and fraud alleged in the original Bill.

Issues were joined on said Answers and testimony was taken and on the final hearing of the case the lower Court decided in favor of the complainants, who are the appellees here, and passed a Decree declaring the fee-contract and

the Deed of Trust securing the same null and void and requiring the same to be surrendered and cancelled and that the Deed of Trust be duly released by valid Deed of Release executed by a Trustee appointed in said Decree and to be recorded in the Recorder of Deeds Office of the District of Columbia. From this Decree only the appellant Adriaans has appealed, his associate Lewis having died during the taking of testimony in the case and the Executrix of the Estate of said Lewis having declined to join in the appeal.

N. B.—Before proceeding to the argument of the case we deem it proper to call the attention of the Court to the fact that the record in this case before this Court fails to include all of the evidence that was offered in the case below and that was considered by the lower Court before arriving at its decree. The evidence referred to are the entire original record and proceedings in administration cause No. 8225 in the Supreme Court of the District of Columbia, holding a Probate term, entitled the Estate of Peter Dill, deceased (R., 73). In the designation of the transcript of the record for this Court by the appellees said proceedings in said administration cause No. 8225 were designated and required to be made a part of the record for this Court (R., 175).

It is respectfully submitted that the transcript of record before this Court is essentially defective and that this Court should either order the appeal dismissed for this reason or order said original record and proceedings in said administration cause No. 8225 in the Supreme Court of the District of Columbia, holding a Probate Term, entitled the Estate of Peter Dill, deceased, to be produced in this Court at the hearing of this cause.

ASSIGNMENTS OF ERROR.

The appellant has set forth in his Brief twenty (20) assignments of error.

It would be tedious and illogical and involve too much repetition to take up each of these assignments of error and answer them separately.

Most of the assignments of error are mere fictions of the imagination of counsel for the appellant and do not state the findings or the alleged errors of the lower Court.

They are set up like men of straw, and counsel then proceed to bowl them over with numerous citations of authorities which may be good law but which have no application to the facts of the present case.

All of the twenty (20) assignments of error of the appellant when boiled down will be found to be embraced under three propositions.

1ST. THE COURT BELOW ERRED IN FINDING THAT THE FEE-CONTRACT AND DEED OF TRUST WERE PROCURED BY MISREPRESENTATION AND FRAUD AND WERE THEREFORE NULL AND VOID.

2D. THE COURT BELOW ERRED IN FAILING TO FIND THAT THERE WAS A MISJOINDER OF PARTIES TO THE SUIT, AND

3D. THE COURT BELOW ERRED IN FAILING TO FIND THAT THE APPELLEES (COMPLAINANTS BELOW) WERE GUILTY OF LACHES.

FIRST PROPOSITION.

(a) Taking up the first proposition let us see what is fraud or a fraudulent representation in the eyes of the law. Story, in his book on Equity, Vol. 1 (13th Ed.), Sec. 192, defines fraud to be:

“Where the party, intentionally or by design, misrepresents a material fact, or produces a false impression, in order to mislead another, or to entrap or cheat him, or to obtain an undue advantage of him; in every such case, there is a positive fraud, in the truest sense of the terms; there is an evil act, with an evil intent; *dolum malum, ad circumveniendum*. And the misrepresentation may be as well by deeds or acts, as by words; by artifices to mislead, as by positive assertions.” This definition is quoted with approval in the case of *Smith vs. Richards*, 13 Pet. 36.

In the case of *Butler vs. Haskell*, in 4 Desaussure’s Ch. Rep. 651, 684, 687, the Court in discussing the question of fraud said in its opinion,

“It must be remembered in the consideration of this question, that the rules at law and in equity are quite distinct. That eminent chancellor, Lord Hardwicke, says expressly, that this Court will relieve against presumptive frauds; so that equity goes farther than the rule of law; for there fraud must be proved, and not presumed only—and that to take an advantage of a man’s necessity is as bad as to take advantage of his weakness—1 Atk., 352; and Lord Chancellor Eldon agrees with him: He says, though there had been a strong inclination in Westminster Hall, in the time of Lord Mansfield, persuaded to it by Judge Buller, to say that whatever is equity ought to be law, this has been reformed by Lord Kenyon—and that the clear doctrine of Lord Hardwicke and all his predecessors was, that there are many instances of fraud that would affect instruments in equity, of which the law could not take notice. See 1 Vesey and Beames, 98. * * *

“The relief is extended not only to young heirs selling their expectancies; but to all who are weak, or necessitous, or not perfectly cognizant of their rights, whether selling expectancies or absolute estates; more especially where the purchaser is very intelligent and acute, and avails himself of his superiority in an unreasonable manner.”

In the case of *Mitchell v. Zimmerman*, 4 Tex., 79, the Court cites with approval the above language quoted from Story's Equity and then went on to say:

"It is a rule in equity that all the material facts must be known to both parties to render the agreement just and fair in all its parts (2 Kent Com., 491). And if there be any intentional misrepresentation or concealment of material facts in the making of a contract, in cases in which the parties have not equal access to the means of information, it will vitiate and avoid the contract (2 Kent Com., 482; 2 Bail. R., 324). It is immaterial whether the misrepresentation be made on the sale of real or personal property, or whether it relates to the title to land or some collateral thing attached to it (7 Wend. R., 380).

It would be superfluous to cite further authorities as to the nature of fraud or fraudulent representations which entitle persons to relief in a court of equity. The general doctrine governing in such cases is well known. We wish, however, to call the Court's attention to a case decided by this Honorable Court in which the principles of equity invoked are very similar to those applicable to the case at bar. In the case referred to, *Slater vs. Rudderforth*, 25 Apps. D. C., 497, the Court in its opinion, at page 508, stated as follows:

"The conveyance from the appellees to the appellants was wholly without consideration, and it is impossible under the circumstances, to believe that it was not superinduced by misrepresentation of some kind, whether intentional or unintentional. In any event it is void as to two of the three minors who executed it, for they had the right to disavow and repudiate it upon coming of age, and they have exercised that right. As to the third and youngest child, it is claimed

that he cannot repudiate the act until he reaches his majority. But he has reached his majority and it is sufficient evidence of repudiation on his part that he continues to prosecute this suit. A more definite act of disavowal can scarcely be supposed.

“Even in the absence of misrepresentation, inasmuch as the conveyance by the appellees was wholly without consideration, it would have to be assumed unless good reason to the contrary were shown, which certainly has not been shown here, that the appellants held the property as trustees for the appellees and that they should reconvey to them.”

Having in mind now the law governing a court of equity in cases similar to the one at bar, in order to decide whether the Court below erred in finding that the evidence submitted brought the case within the law as above set forth, we must turn to the facts and circumstances of this particular case.

Let us review then as briefly as possible the facts and circumstances of the case at bar which are recognized by a court of equity as proof of fraud or misrepresentation:

(A) *The conditions and relations of the two parties are in striking contrast.* The appellant Adriaans was a lawyer of many years experience and resided where most of the property involved was situated and where the legal proceedings were being had. The appellees were non-residents of the District of Columbia, they were all young and inexperienced, their ages at the time of the alleged transactions being respectively: Seven (7), nine (9), thirteen (13), fifteen (15), eighteen (18) and twenty-one (21) years. They were very poor; the father of appellees was very sick and dying of cancer at the time of the alleged transaction (R., 23, 35); the mother of appellees was a woman of very little education and of no experience; the grandmother,

Ann Dill, was in poor health and of feeble mind and easily influenced (R., 28, 60, 61), and could write only her own name (R., 35).

(B) Appellant misrepresented to appellees that the object of signing the alleged power of attorney, the fee-contract and the Deed of Trust was to obtain money for the grandmother of appellees who was in needy circumstances. (R., 23, 24, 25, 27, 36, 37, 43, 47, 57, 58, 59, 112, 113, 114, 115, 116, 139, 140 and 141.)

The appellant Adriaans in paragraph 6 of his answer under oath distinctly denies that it was represented to the complainants (appellees) that the object of (signing) said papers was to secure an allowance for Ann Dill (R., 16-17).

On cross-examination the appellant Adriaans testified as follows:

“Q. As matter of fact, didn't you state on that occasion (i. e., the time of the signing of the alleged papers by appellees) that the object of your employment by Mrs. Ann Dill was to obtain some money for her; that she was in need of money and had no means at her disposal?”

“A. No, sir; I stated that Mrs. Ann Dill was in a distressed condition financially and that she had told me she needed money and that she would be able to get money if the probate of the will could be procured, and it was for this purpose that we were to make the defense of the will to enable her to raise money to live upon; that she had people in Georgetown who could have helped her, but they were loath to give her any money unless she procured the probate of the will, and I told Mrs. Annie L. Dill that Mrs. Ann Dill had said that to me, but as for giving that as a reason for their signing these papers, no such reason was given.” (R., 113.)

(C) Real contents and legal effect of the papers alleged to have been executed by the appellees at the instance of the appellant were not made known to the appellees at the time of the execution thereof (R., 27, 38, 44, 59, 67 and 68).

(D) The appellees testify that they never employed said Adriaans or his associate Lewis as attorneys in any capacity whatever to represent them in the matter of the Estate of Peter Dill, deceased (R., 38, 39, 44, 49, 59, 67 and 68).

(E) Appellees had no knowledge of the fraud and misrepresentation practiced upon them or either of them until within a year prior to the filing of the original Bill of Complaint in this suit, which was about a year after the death of their grandmother, Ann Dill, when they employed a lawyer of Baltimore City to go to Washington, D. C., and look up the matter of the division of the personal estate coming to them on the death of their grandmother, Ann Dill (R., 27, 38, 44, 50, 59, 67, 68, 71 and 72).

(F) Appellees never ratified or sanctioned the alleged fee-contract, Deed of Trust or power of attorney, but immediately on acquiring knowledge thereof employed counsel with instructions to take the necessary proceedings for their annulment (R., 29, 38, 45, 50, 60 and 67).

(G) While appellant claims fee for services performed under contract was due in the year 1900 (R., 134), nevertheless, he never presented any bill to nor made any demand of appellees or any of them directly or indirectly for the payment of his fee under said alleged contract up to the time of filing this suit (R., 28, 29, 134, 135, 137, 138 and 139).

(H) Appellant has been disbarred from practice as attorney (R., 105), and his associate, Samuel H. Lewis, never had an active law practice (R., 106).

(I) Appellant did not inform appellees at the time of the signing of the alleged papers that the executors and trustees under the will of Peter Dill, deceased, were lawyers in active practice and had assumed their duties as such, and were defending the will of Peter Dill, deceased (R., 114), but, on the contrary, he told them it was *necessary* for them to employ lawyers and defend the contested will (R., 112-114). Nor did appellant inform appellees of the true value of the estate (\$10,000), nor did he tell them that by his alleged employment their estate would be paying double fees, one to the executors and trustees and the other to the appellant and his associate, Lewis.

(J) The real motive of appellant in obtaining signatures of appellees to alleged papers was to secure and make safe his own fee, since he had already agreed with the grandmother, Ann Dill, according to his testimony, to represent her for a contingent fee of twenty (20%) per cent of the property involved, which would amount to approximately two thousand dollars; said Ann Dill having only a life interest in said property left under the will, and the appellees having a vested remainder therein (R., 109, 110, 111, 119, 120, 121, 122 and 123).

(K) No reasonable, beneficial or necessary services were rendered by the appellant or his associate Lewis to the appellees, but on the contrary their conduct and action in the case were a detriment to the case (R., 70).

(L) Appellant as an attorney went after appellees (R., 22, 119), whereas appellees or any of them were never in the office of appellant or his associate, Lewis (R., 129).

(M) There is no correspondence from the appellant or from his associate, Lewis, to the appellees offered in evidence (R., 126), and the entire correspondence from the appellees to the appellant or his associate, Lewis, consist of one (1) letter and two (2) postal cards from the mother of appellees (R., 125, 126, 151, 157, and 158), which give no evidence of the relation of attorney and client existing between appellant and appellees, but are rather to the contrary.

(N) The alleged Deed of Trust, under which appellant claims, provided for the sale of the appellees' real estate on default or failure in the payment of the fee claimed to be due under the alleged contract (R., 12); hence the appellees' vested interest in remainder may have been sold during their minority.

(O) Said alleged Deed of Trust was kept secret and was not put on record until two (2) years after its execution (R., 11), and the notary public whose name appears thereon as having taken the acknowledgment of the appellees has no recollection of taking any such acknowledgment (R., 75, 76); furthermore, the trustees named in said alleged Deed of Trust had no knowledge of and never consented to accept such a trust, and immediately after it was recorded and made known to them they repudiated it (R., 14, 15, 53, 54 and 124).

(P) The original Deed of Trust and the original fee-contract were last in the possession of the appellant, who failed to produce them as evidence at the taking of the testimony in this case, although called upon to do so, and gave as an excuse for not producing them that said papers had been mislaid or lost while in his possession (R., 76, 87 and 142).

It is respectfully submitted that the Court below not only did not err, but was compelled as a Court of conscience and justice to find that the fee-contract and Deed of Trust were procured by misrepresentation and fraud, and were, therefore, null and void. The facts and circumstances of the case are such as to shock not only the conscience of the Chancellor or of an honest layman, but should even shock the conscience of a legal rogue.

SECOND PROPOSITION.

(A) It is contended by the appellant that an infant can not disaffirm his alleged contract during infancy and that, therefore, the two appellees, Maurice E. Dill (now near 20 years of age) and Leo A. J. Dill (now twenty-two years of age) could not disaffirm the alleged contract and Deed of Trust at the time this suit was brought, to wit, November 27, 1908, and, therefore, could not file a suit to have the same declared null and void, and that, therefore, there is a misjoinder of parties by the fact of their being made plaintiffs in the case. Now the evidence in this case clearly shows that fraud and misrepresentation were practiced upon these two infants by the appellant; that being the case, the alleged contract and Deed of Trust are not voidable but absolutely void.

Furthermore, even though the question of fraud and misrepresentation be disregarded for the time being, the facts and circumstances of the case clearly disclose that the alleged contract and Deed of Trust were prejudicial to the interests of said infants, and, therefore, not voidable, but void, because the employment of the appellant as attorney by the infant appellees was for services altogether unnecessary and detrimental to the interests of said infant appellees, and required the payment of double fees from their estate, all to no purpose.

It must be borne in mind that the alleged fee contract and deed of trust are in the nature of a joint obligation. It may also be well to recall here that equity always seeks to avoid a multiplicity of suits.

Now can it be seriously argued that when an alleged contract is shown to be void, even as against adults, so that a Court of equity will intervene and set the same aside, that in the case of infants, where the contract is likewise void by reason of fraud or by reason of being prejudicial to the interests of the infant, the same Court of equity will stand by and grant no relief to the infant at his own instance or at the instance of his guardian or next friend because, forsooth, the Court wishes to allow the infant the right to affirm or disaffirm an alleged contract on coming of age that is void?

See the evil that could result even in the present case from such an absurd doctrine. The appellant contends that he had earned his fee and that the same was due from the appellees in the year 1900; thereupon he could have proceeded under the alleged Deed of Trust securing his alleged fee-contract to sell the interests of the infants in the real estate involved in this suit, and yet the infants' hands would be tied and they would be helpless to preserve their rights in the premises. The law governing such cases is laid down by Tyler in his work on the Law of Infancy, in Sec. 28, as follows:

“It may be stated as a universal rule, that all executory contracts, which are voidable on the ground of infancy, may be disaffirmed during infancy by the minor as well as after he has attained to full age. So, also, all contracts respecting property, which are executed by delivery of some article, on payment of money, may be rescinded by the infant, both before and after the time of his coming of age; though such

disaffirmance will in no case avail after the statute of limitations has fully run (Vide Lessee of Drake vs. Ramsey, 5 Ohio R., 251. Cresinger vs. Welch, 15 *ib.*, 156)."

Section 29, in the same author's work, is as follows:

"In a leading case in the Court of Errors in the State of New York, Jones, Chancellor, said: 'The general rule is that an infant can not avoid his contract executed by himself, and which is therefore voidable only while he is within age. He lacks legal discretion to do the act of avoidance. But this rule must be taken with the distinction that the delay shall not work unavoidable prejudice to the infant, or the object of his privilege, which is intended for his protection, would not be answered.' He then says: 'The true rule, then, appears to me to be this: That when the infant can enter and hold the subject of the sale till his legal age, he shall be incapable of avoiding till that time; but when the possession is changed, and there is no legal means to regain and hold it in the meantime, the infant, or his guardian for him, has the right to exercise the power of rescission immediately.'"

Field, in his work on the Law of Infants, in Sec. 8, says:

"That as a general rule the contracts of an infant which may be for his benefit are voidable only; and those which are manifestly to his prejudice are void, citing Fridge vs. State, 3 G. & J. (Md.), 103, in which case the Court said (page 115): 'Some contracts made by infants are binding, such as contracts for necessities. Some are void and others voidable only, such as contracts that may be for the benefit of the infant. But a contract that a Court can see and pronounce to be to the prejudice of the infant, is void.'"

In the case of McGreal vs. Taylor, which was appealed from this Court and which is reported in 167 U. S., 688, the Court lays down the rule: "That an infant's deed is generally voidable, but where it appears on its face to be to the prejudice of said infants, ~~it is deemed to be void~~ where it appears on the face of

Can it be said that the alleged Deed of Trust securing a fee of 20 per cent of the estate of said two infants, Maurice E. Dill and Leo A. J. Dill, was other than to the prejudice of said infants, where it appears on the face of said Deed of Trust that said minors had scarcely attained the age of reason (to wit, being seven and nine years of age, respectively), and where it further appears that said alleged legal services were unnecessary, and even detrimental to their interests?

In the case of Cummings vs. Powell, reported in 8 Tex., 91-92, the Court, in its opinion, stated the law to be as follows:

"The general rule is that an infant cannot avoid his contract executed by himself, and which is therefore voidable only while he is within age. He lacks legal discretion to do the act of avoidance. But this rule must be taken with the distinction that it shall not work unavoidable prejudice to the infant or the object of his privilege would not be answered. When applied to a sale of his property it must be his land, a case in which he may enter and receive the profits until the power of finally avoiding shall arrive. The true rule was said to be that where the infant can enter and hold the subject of the sale till his legal age, he shall be incapable of avoiding till that time; but where the possession is changed, and there are no legal means to hold and regain it in the meantime, the infant, or his guardian for him, has the right to exercise the power of rescission immediately; that the common law gave no action or other means by which the mere possession of personal property could be reclaimed and held subject to the right of avoidance."

In the case of Slater vs. Rudderforth, 25 App. D. C., 497, cited under the first proposition, the same objection was urged, to wit, that one of the parties plaintiff was a minor when he filed the bill in the case seeking to set aside a deed on the ground of fraud and misrepresentation, but this Court overruled the objection, especially in view of the fact that the minor had attained his majority pending the litigation, which is the case with one of the infant appellees herein, Leo A. J. Dill.

(B) There is a further objection made in the 18th assignment of error on the ground of misjoinder of parties defendant, to wit, that the Court below erred in granting the relief prayed for in the bill since the surviving trustee under said alleged Deed of Trust, Clarence F. Norment, had been made a party defendant. This objection is puerile. The defendant, Norment, surviving trustee, on the face of the alleged Deed of Trust received the legal title of the property therein involved. Now there is grave question whether the mere filing of a renunciation of the trust in the recorder of deeds' office two years after the execution of the trust would take all right, title and interest out of said trustee. If so, where did said right, title and interest go? Did it revest in the original grantors in said alleged Deed of Trust or in the beneficiaries under said trust, or did it remain in abeyance? Under the circumstances said surviving trustee, Clarence F. Norment, was without doubt *a nominal party*, and even a necessary, though not, perhaps, an indispensable, party to the suit.

Appellant contends that no relief is sought or grantable against said surviving trustee, Clarence F. Norment. This is answered by reference to the testimony of said Clarence F. Norment (R., 52-53), and by reference to the third prayer of plaintiff's Bill of Complaint, which reads as follows:

"3d. That said Deed of Trust referred to in the bill may be declared null and void and of no effect and that said Clarence F. Norment, or a trustee to be appointed herein, may be authorized and ordered to execute and deliver a proper and valid Deed of Release of said Deed of Trust to your complainants for the purpose of recording the same in the Recorder of Deeds' office of the District of Columbia."

The law governing any such case is elementary and is well expressed in Mitford's and Tyler's work on Pleadings and Practices in Equity, at page 20:

"These decisions recognize a distinction, as to the joinder of parties in a suit in equity, between *nominal*, *necessary or proper*, and *indispensable* parties. A nominal party is one joined for sake of conformity in the bill, having no interest, legal or equitable, to be affected by the suit. A necessary party is one who has an interest in the matter in controversy, and should be made a party to enable the Court to do complete justice by adjusting all the rights involved, and must be made a party if within reach of the process of the Court; still, if his interest is separate from those before the Court he is not an indispensable party. An indispensable party is one where a decree can not be made without affecting his interest. Also to the same effect are the following cases":

1 McAllister, R., 31, 37.

Shields vs. Barrow, 17 How., 130.

Minnesota vs. Northern Securities Company, 184 U. S., 236.

THIRD PROPOSITION.

The appellant contends that the appellees who are over age have been guilty of laches in failing to affirm or disaffirm the alleged fee-contract and alleged deed of trust, and by failing to file this suit in equity shortly after reaching

twenty-one years of age. Now this contention ignores altogether the fact of the fraud and the fraudulent representations that were practiced on the appellees. Furthermore, where is there any evidence in the case that the appellees who are of age ever affirmed or elected to stand by the alleged fee-contract or Deed of Trust involved in this case? Mere silence or non-action are not sufficient.

The evidence in the case on the contrary proves overwhelmingly:

1st. That the appellees had no knowledge of the fraud or misrepresentation practiced upon them until within a year prior to the filing of the original bill of complaint in this suit which was about a year after the death of their grandmother, Ann Dill, when they employed a lawyer of Baltimore City (John H. Dumler) to go to Washington, D. C., to look up the matter of the division of the personal estate coming to them on the death of their grandmother, Ann Dill (R., 27, 38, 44, 50, 59, 67, 68, 71 and 72).

2d. That appellees never ratified or sanctioned the alleged fee-contract, Deed of Trust, or power of attorney, but immediately on acquiring knowledge thereof employed counsel and took the necessary proceedings for their annulment (R., 29, 38, 45, 50, 60 and 67).

3d. That the appellees never had any bill presented to them, or demand made of them by the appellant or his associate, Lewis, either directly or indirectly for the payment of their fee under said alleged fee-contract secured by the said alleged Deed of Trust (R., 28, 29, 134, 145, 137, 138 and 139), although the appellant claims that the fee for services rendered by him and his associate, Lewis, under said alleged fee-contract was due in the year 1900, the services thereunder having been then completely performed (R., 134).

It would really appear that the appellant, if any one, has been guilty of laches in failing to present to the appellees

as they became of age his bill for services which he claims to have been due since the year 1900.

Now the law of laches in general, prevailing in Courts of Equity, is fully and ably discussed and reviewed by the present Chief Justice of this Honorable Court in the case of Pryor vs. McIntire, 7 App. D. C., 417 (affirmed in 173 U. S., 38). The present Chief Justice quoted with approval in his opinion in said case the language of Mr. Justice Brewer in Holstead vs. Grinnan, 152 U. S., 412, which is as follows:

“The length of time during which the party neglects the assertion of his rights which must pass in order to show laches varies with the peculiar circumstances of each case, and is not like the matter of limitations subject to an arbitrary rule. It is an equitable defense controlled by equitable considerations, and the lapse of time must be so great and the relations of the defendant to the rights such, that it would be inequitable to permit the plaintiff to now assert them.”

And the present Honorable Chief Justice in the same case of Pryor vs. McIntire, quoted with approval the language used in the opinion of the Court in Michoud vs. Girod, 4 How., 503, 560, which is as follows:

“In a case of actual fraud, Courts of Equity give relief after a long lapse of time * * * in general length of time is no bar to a trust clearly established to have once existed and where fraud is imputed and proved length of time ought not to exclude relief.”

In the case of Sims vs. Eberhardt, reported in 102 U. S., 300, 309, 311, 312, the Court, in its opinion, stated the law as follows:

"We are not, however, called upon by the exigencies of this case to decide that a wife cannot, during her coverture, disaffirm a deed which she made during her infancy. The question now is, whether Mrs. Sims did disaffirm her deed within a reasonable time after she attained her majority. What is a reasonable time is nowhere determined in such a manner as to furnish a rule applicable to all cases. The question must always be answered in view of the peculiar circumstances of each case. *State vs. Plaisted*, 43 N. H., 413; *Jenkins vs. Jenkins*, 12 Iowa, 195, and numerous other cases. It must be admitted that generally the disaffirmance must be within the period limited by the Statute of Limitations for bringing an action of ejectment (15 years in the District of Columbia). A much less time has in some cases been held unreasonable. It is obvious that delay in some cases could have no justification, while in others it would be quite reasonable * * *"

Page 311.

"We are aware that the decisions respecting the disaffirmance of an infant's deed are not in entire harmony with each other. While it is generally agreed that the infant to avoid it must disaffirm it within a reasonable time after his majority is attained, they differ as to what constitutes disaffirmance and as to the effect of mere silence. Where there is nothing more than silence, many cases hold that an infant's deed may be avoided at any time after his reaching majority until he is barred by the Statute of Limitations, and that silent acquiescence for any period less than the period of limitation is not a bar. Such was in effect the ruling in *Irvine vs. Irvine*, 9 Wall., 617. See also *Prout vs. Wiley* (28 Mich., 164), a well-considered case, and *Lessee of Drake vs. Ramsey*, 5 Ohio, 251. But, on the other hand, there appears to be a greater number of cases which hold that silence during a much less period of time will be held to be a confirmation of the voidable deed. But they either rely upon *Holmes vs. Blogg* (8 Taunt., 35), which was not a case of an infant's deed, or subsequent cases decided on its authority, or they rest in part upon other circumstances than mere

silent acquiescence, such as standing by without speaking while the grantee has made valuable improvements, or making use of the consideration for the deed. We think the preponderance of authority is that, in deeds executed by infants, *mere* inertness or silence, continued for a period less than that prescribed by the Statute of Limitations, unless accompanied by affirmative acts, manifesting an intention to assent to the conveyance, will not bar the infant's right to avoid the deed."

In the case of *Tucker, et al., vs. Moreland*, 10 Pet., 75, the following exposition of the law appears in the opinion of the Court:

"The first instruction, being given by the Court, is of course excluded from our consideration on the present writ of error. In the first place, it assumes, as matter of law, that a voluntary and deliberate recognition by a person after his arrival at age, of an actual conveyance of his right during his non-age, amounts to a confirmation of such conveyance. In the next place, that a mere acquiescence in the same conveyance, without objection, for several months after his arrival at age, is also a confirmation of it. In our judgment, neither proposition is maintainable. The mere recognition of the fact, that a conveyance has been made, is not, *per se*, proof of a confirmation of it. Lord Ellenborough, in *Baylis vs. Dineley* (3 M. & Selw., 482), was of opinion that an act of as high a solemnity as the original act was necessary to a confirmation. 'We cannot' (said he) 'surrender the interests of the infant into such hands as he may chance to get. It appears to me that we should be doing so in this case' (that of a deed) 'unless we required the act after full age to be of as great a solemnity as the original instrument.' Without undertaking to apply this doctrine to its full extent, and admitting that acts *in pais* may amount to a confirmation of a deed, still we are of opinion, that these acts should be of such a solemn and

unequivocal nature as to establish a clear intention to confirm the deed, after a full knowledge that it was avoidable. (a) *A fortiori*, mere acquiescence, uncoupled with any acts demonstrative of an intent to confirm it, would be insufficient for the purpose. In *Jackson vs. Carpenter* (11 Johns, R., 542, 543), the Court held that an acquiescence by the grantor in a conveyance made during his infancy, for eleven years after he came of age, did not amount to a confirmation of that conveyance; that some positive act was necessary, evincing his assent to the conveyance. In *Austin vs. Patton* (11 Serg. & Rawle, 311), the Court held that to constitute a confirmation of a conveyance or contract by an infant, after he arrives of age, there must be some distinct act, by which he either receives a benefit from the contract after he arrives at age, or does some act of express ratification."

The present learned Chief Justice of the United States sets forth clearly in his opinion in the case of *Baker vs. Cummings*, 169 U. S., 197, that the Statute of Limitations or laches do not begin to run until the discovery of the falsity of any material and fraudulent representation by the party defrauded; his language is as follows (pp. 197-198):

"This, obviously, is the case, for as the statute of limitations began to run from the time when suit might have been brought to annul the sale, it results that the discovery of the falsity of any material and fraudulent representation by which the sale had been induced, gave rise to the right to commence an action to rescind and therefore fixed the period when the statute of limitations commenced its course."

In the case of *Wells vs. Seixas*, 24 Fed. Rep., 83, the law applicable to the case at bar, even waiving the existence of fraud and the time of the discovery thereof, is very clearly stated as follows:

“In the case at bar as the proof now stands, there is no act of omission or commission on the part of the plaintiff of which to predicate an intention to confirm the deed. There is silence profound and unbroken but nothing else. *The plaintiff since her majority has not lived in the vicinity of the property in question*, and there is no evidence that she ever saw it or knew of its existence until the fall of 1883. (Plaintiff executed the deed in question in 1870 and came of age in 1872.) The language of the Court just quoted (102 U. S., 312) is peculiarly applicable. It is a case of ‘mere in-ertness or silence, continued for a period less than that prescribed by the statute of limitations.’ The plaintiff upon this authority had 20 years in which to disaffirm her deed. She did disaffirm it in 11 years.”

Under the facts and circumstances in this case in view of the law of laches as cited above, how can it be seriously contended that the Court below erred in failing to find that the appellees who are of age were guilty of laches.

Appellant mentions that he has been deprived of the testimony of some witnesses by reason of the alleged delay on the part of the appellees in filing their suit. Did not the appellees proceed with all reasonable speed as soon as they discovered the existence of the alleged Deed of Trust and had notice of the alleged fee-contract secured thereby, to-wit, within the one year after such discovery? Was not the suit filed a year before Samuel H. Lewis, a co-defendant and associate of the appellant died and have not the appellees likewise suffered by reason of the death of their father who was present at the time the alleged papers were signed and likewise by the death of their grand-mother, Ann Dill?

Surely if the courts of law will allow the appellees fifteen years within which to file an ejectment suit to protect their rights and property that were attempted to be taken

away by the fraudulent actions and misrepresentations of the appellant, will it be contended for a moment that a Court of Equity will not allow the appellees one year after the discovery of fraud practiced upon them and only ten years after the perpetration of the fraud to protect their rights and property in the same case, especially where no rights of innocent third parties are involved.

It is respectfully submitted that the decree of the lower Court, passed on the first day of July, 1910, declaring the alleged fee-contract and the alleged Deed of Trust to be null and void and ordering said alleged Deed of Trust to be released of record and releasing and discharging the property of the appellees (plaintiffs) from said alleged Deed of Trust should, as a matter of conscience and justice, be sustained and confirmed by this Honorable Court.

DANIEL W. O'DONOGHUE,
Attorney for Appellees.

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

MAR. --6-1911

Henry W. Hodges.
Blair.

In the Court of Appeals of the District of Columbia.

JANUARY TERM, 1911.

JOHN H. ADRIAANS, }
 } No. 2,253.
 }
WILLIAM P. DILL ET AL.

Supplemental Brief for Appellant.

EDWARD L. GIES,
TRACY L. JEFFORDS,
Attorneys for Appellant.

2. All matter in the present record, beginning with "Sub-

poena to answer," p. 162 to, and including "Objection to approval of Bond," p. 174, introduced therein under appellees' designation of record (p. 175) is in violation of Rule 5 of this Court.

3. Appellant does not controvert the definition of "fraud," as contained in the cases cited on pages 9, 10, 11 and 12 of appellees' brief, but denies their pertinency to the case at bar. No fraudulent representations were used by appellant in obtaining execution of the contract and deed at bar, as appears from the letter of Annie L. Dill (Rec., p. 151; Dft. Ex. 8); the postal (Rec., p. 157; Dft. Ex. 24); and the letter (Rec., p. 158; Dft. Ex. 26) in which she stated that papers similar to those sent by appellant, and his associate Lewis, has been sent by Waters. She signed appellants' power of attorney (Rec., p. 89; Dft. Ex. 25), in preference of a similar paper sent to her by Joseph J. Waters. She signed this out of the presence of either appellant or Lewis, and acknowledged it voluntarily before a Notary of her own selection. This re-affirmed and ratified her previous action of September, 1898, which is now the cause of complaint at bar.

4. In answer to the review of the evidence, contained on pages 12 to 16, it may be said:

a. That appellant resided here, where the cause was pending, was a good reason for his selection as attorney and that appellant had many years' experience was an additional reason. That appellees had those respective ages was no fault of appellant, but was an additional cause for safe-guarding their interests. That their father had a cancer was unknown to appellant, nor would that have altered appellees' need of counsel at that time.

b. The quotation from appellant's testimony (Rec., p. 113) instead of sustaining the alleged misrepresentation, refutes it.

c. This is denied by appellant (Rec., pp. 92, 93, 110, 111, 112, 113, 114, 115, 116 and 117).

d. Appellees are contradicted in this respect by the record of the probate cause which shows that their mother, as guardian *ad litem*, filed papers there on their behalf, through appellant and Lewis.

e. As the record does not disclose that any fraud or misrepresentation was ever practiced upon appellees, but discloses the contrary, it is not material when Dumler informed them of the existence of the deed of trust at bar, J. J. Waters knew of said deed in October, 1900, and was then acting as appellees' attorney.

f. The contract and deed of trust needed no ratification from William P. Dill because he was of age when he signed them. He is barred by laches even if there was fraud in the procurement, which is denied (*Baker vs. Cummings*, 169 U. S. 189).

g. Appellees gave appellant a lien upon a fund that was to come to them from the Executors of the Estate upon its liquidation. There was no need to present any bill to appellees, but there was to the Executors, and it was duly presented to the latter.

i. That the executors regarded it desirable to have counsel to aid them in handling the Will contest, appears from a petition filed by them in the Probate cause, on May 18, 1900. The executors are not entitled to counsel fees for defending a will, unless they act in a dual capacity, as counsel and executors.

j. Appellant testified that he would not have entered upon the employment if appellees had not concurred in their grandmother's selection. The latter wrote a letter to appellees requesting them to concur (Rec., p. 33; 92).

k. Appellant contends that he performed his contract, and that the services rendered thereunder were beneficial to appellees.

1. Appellant was requested by Ann Dill, one of the clients, to go to appellees, the other clients.

m. The reason letters from appellant, and his associate, to appellees are not in the record is because appellees failed to introduce them. Dft. Ex. 8 (Rec., p. 151); Dft. Ex. 24 (Rec., p. 157; Dft. Ex. 26 (Rec. p. 158), which enclosed Dft. Ex. 25 (Rec., p. 89) show that appellees communicated with appellant, and his associate, during the progress of the probate cause; and disprove their ignorance of services being rendered for them by appellant.

o. The deed of trust and contract were not kept secret; but did not become effective until the happening of a condition, to-wit: the probate of the will. It was not entitled to be, and was not, recorded before the occurrence of that event.

p. Appellant does not deny that he has mislaid the original contract and deed of trust, and has promised to supply them to the record when found. The loss to the record is not appreciable, because true copies thereof are in it (Rec., pp. 11, 87).

5. (A.) Appellees' "Second Proposition" is as unsound in law as it is in fact (p. 17, brief.) Appellant denies that the record discloses any fraud. Hence the contract and deed of

trust are voidable by the infants upon reaching majority; and not during the continuance of the minority. It is also sought to be shown that no legal services were necessary to be rendered for the infants. But the motion of the Executors of May 18, 1900, and the order of Court thereon refute this.

If services had to be performed—as indicated by the executors' petition and the Court's order thereon—they were not "altogether unnecessary and detrimental to the interests of said infant appellees," but were indispensable. The only question left then would be: Who rendered the necessary services? Appellant claims the record will show it was done by him.

6. In reference to the authorities cited on behalf of appellees (under head *a*), some comments as to their relevancy to the case at bar would seem appropriate.

a. The extract from Story Sec. 192 (Brief, pp. 9, 10) is inapplicable to the case at bar, because appellees had more, and better means of, knowledge, of the value of the estate than appellant. The sole guide for fixing the compensation was appellant's knowledge that the Courts had sustained such compensation on numerous occasions. Appellant had not seen the property in Charles County, Md. (and has not seen it yet). As for the property in Georgetown, appellant met William Dill there (Rec., p. 55). So the charge of concealment seems unfounded.

b. In the case of Bratter *v.*s. Haskell (p. 10, brief) the Court says:

"Contract of purchase is set aside on the ground of gross inadequacy of price, connected with the weakness and necessities of the sellers; and on the further ground that the agent was legally incapacitated to purchase from his principal the estate which was the subject of the agency. So long as their relations of confidence continued."

No such situation is presented by the case at bar. The case of Bowling *v.*s. Scales, 1 Tenn, Ch. 618, is closely akin to that at bar.

c. In case of Mitchell *v.*s. Zimmerman (p. 11, brief) the same comment may be made (as in par. *a*) on 1 Story 192.

d. The case of Slater *v.*s. Rudderforth (p. 11, brief) is likewise inapplicable to the case at bar, because there the proof showed a failure of consideration, whereas here the opposite is true.

c. The extract from Sec. 28, Tyler on Infancy (p. 18, brief) is inapplicable to the case at bar because first, it alludes to "*executory*" contracts, whereas the contract here is executed; second, it alludes to personalty, whereas the contract here relates to realty. This difference is well recognized by the authorities and is noted by the same author in Section 30, where he says:

"Conveyances of real property by feoffment on delivery of the deed, which comes in lieu of payment, or by any other conveyance of such property in fee, for life or years, cannot be avoided before the infant attains full age, and that as to the party by whom the voidable acts of the infant may be disaffirmed or avoided, the true rule is that no one but the infant himself, or his legal representatives, executors and administrators possess or can be permitted this privilege or right."

f. The quotation from Sec. 29 of Tyler (p. 19, brief) is likewise inappropriate here because the only case where ground for immediate rescission is, "when the possession is changed." This is not true in the case at bar; appellant has never been in possession and appellees have had continuous possession.

g. In the case of *Fridge v. State* (p. 19, brief) the Court says:

"Some contracts made by infants are binding, such as contracts for necessities. Some are void; and others are voidable only, such as contracts that may be to the benefit of the infant. A contract that a Court can see and pronounce to be to the prejudice of the infant, is void."

Appellant believes his contract was highly beneficial to the infants.

h. The same comment is applicable to *McGreal v. Taylor* (p. 20, brief).

i. In the case of *Cummings v. Powell* (p. 20, brief) the Court says:

"The tendency of decisions, for a century at least, has been for the extension of the rule, that the acts of infants shall be deemed voidable only, and subject to their election, either to affirm or disallow them."

7. (B.) There can be little doubt that upon the renunciation of the two Trustees, the title conveyed to them became dormant, or was held in abeyance. If an executor renounces his appointment, the Will remains unenforceable until an administrator is substituted. So the trust at bar became unenforceable upon the renunciation of the trustees, and the subsequent death of one of them. There being no title left in the trustees after renunciation it was futile to make the survivor a party, when he was neither a necessary nor a nominal party. The third prayer of the bill, so far as it included the name of defendant Norment, was unwarranted.

8. The appellees' "Third Proposition" (p. 23, brief) is worthy of comment. The brief teems with allusions to "fraud" and "fraudulent representations" as though these had been completely proved by the evidence; whereas the opposite condition is true. Appellees must be assumed to have had knowledge of the existence of the trust in October, 1900, because J. J. Waters, their attorney then had notice of it. (Patten *v.s.* Warner 11, App. C. 149). Even after Dumler informed appellees they waited 18 months. Did it take 18 months to file a Bill in Equity?

The brief iterates and reiterates that appellees did not ratify or sanction the contract. No distinction seems to be recognized therein among the appellees. As to one (William) it needed no ratification, because he was *sui juris* at the time of execution. As to Marian, John and Edward, the disaffirmance should have been made within 3 years after reaching majority by them, respectively (Sec. 1265, Code; Baker *v.s.* Cummings, 169 U. S. 189). As to Leo and Maurice they sued prematurely, because the right of election had not accrued to them. This objection disappears as to Leo, who became of age during the suit (Slater *v.s.* Rudderforth 25, App. c. 497), but remains as to Maurice.

The appellees' brief on the subject of laches (pp. 24 to 29, inc.), proceeds upon the theory that the Statute of Limitations applicable to the case at bar is the Statute as to actions of Ejectment (Sec. 1265, Code). The cases they cite are all under that head. They are cases where an infant grantor has made a deed in fee, under which the grantee has entered into possession, and the question occurred within what period should Ejectment be brought after removal of the disability, or double disability (Sims *v.s.* Everhardt, 102 U. S. 300)—the disaffirmance being indicated by the filing of the action of Ejectment. It is apparent that these cases are not relevant to the case at bar, because in the latter there was first, no deed in fee; sec-

ond, no transfer of possession; third, no action of ejectment. When these three elements combine in a case, then *Sims vs. Everhardt*, and similar cases, are appropriate to be followed. But each of these three elements is missing from the case at bar.

For the foregoing reasons the brief of appellees, however well such reasoning would apply to cases similar to those cited, does not apply to the case at bar, because dissimilar and foreign thereto.

Respectfully submitted,

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